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ABSTRACT

A set of lessons for teaching about the debate that produced the Bill of Rights to the Constitution of the United States is presented. Initially, the lessons introduce students to the positions taken by prominent Federalists and Anti-Federalists over the need for a bill of rights. These activities prepare students for a subsequent lesson that creates a mock ratifying convention in which class members role play leading Federalists and Anti-Federalists debating a proposed amendment that would add a bill of rights to the Constitution of 1787. The lesson set includes four teaching plans and accompanying lessons for students: (1) Why the Federalists Opposed a Bill of Rights and Favored the New Constitution of 1787; (2) Jefferson and Madison on the Need for a Bill of Rights--Personal Letters as Primary Resources; (3) Why the Anti-Federalists Favored a Bill of Rights and Opposed the New Constitution; and (4) A Second Federal Convention: A Mock Ratification Convention--Is a Bill of Rights Necessary? Rules for handling archival documents, a chronology of events associated with the Federalist/Anti-Federalist debate, a 58-item selected bibliography, and the contents of the constitutional characters packets conclude the document. (DB)

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FEDERALISTS AND ANTI-FEDERALISTS

DEBATING A BILL OF RIGHTS, 1787-1789

BY

JOSEPH R. GOTCHY
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SUMMER OF 1990
MONTICELLO-STRATFORD HALL SUMMER SEMINAR FOR TEACHERS
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I would like to thank the Robert E. Lee Memorial Association and the Jessie Ball duPont Religious, Charitable and Education Fund for the opportunity to work at Stratford Hall Plantation and the duPont Library during the summer of 1990. As an educator and citizen I feel fortunate to have had the opportunity to immerse myself in the constitutional legacy left by the Federalists and Anti-Federalists who fought so passionately for what they believed in.

Mrs. Mary Tyler Cheek deserves more than a round of applause for her work on behalf of Stratford Hall and the Monticello-Stratford Hall Summer Seminar For Teachers. Her inspiration and constant effort have benefitted teachers and students throughout the United States. She personifies the notion of a person with "civic virtue."

Dr. Dan Jordan and C. Vaughan Stanley deserve the highest compliments for the work they do for teachers. The Monticello-Stratford Hall Summer Seminar has developed an excellent national reputation. That reputation is due in large part to the effort of these two men. As scholars, teachers, and friends they represent the best that mankind has to offer.

The staff at Stratford has been wonderful. Jeanne Calhoun, Judy Hynson, Linda Jacobs, and Robert Henry were especially kind and helpful during my time at the duPont Library. Thanks to each of you.

I would also like to thank Professor Harvey Mansfield for introducing me to The Federalist. The summer I spent with him at Harvard University allowed me to understand and appreciate the power of this national treasure.

Nobody has influenced my teaching more than John Patrick, the Director of the Social Studies Development Center at Indiana University. By example, he has helped me define great teaching. Through his work as a curriculum developer he has provided me with great resources for my students. During the summer of 1989, I was a participant in the Master Class for Teachers that was held at Montpelier, the home of James Madison. During the seminar Murray Dry introduced me to the Anti-Federalists. But like he had done for the Federalists, John Patrick taught me how to teach young people about the Anti-Federalists. He introduced me to the lesson set format that I have used to develop this package of materials. My work is an attempt to draw from great scholars and great people the lessons that every generation of Americans need to learn. I have used John Patrick's curriculum blueprint because I want my students to benefit from his expertise. Bo knows baseball, but John knows how to teach The Federalist!

FEDERALISTS AND ANTI-FEDERALISTS
DEBATING A BILL OF RIGHTS, 1787-1789

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LESSON SET
FEDERALISTS AND ANTI-FEDERALISTS
DEBATING A BILL OF RIGHTS, 1787-1789

Introduction

In his essay, "Social Science and the Constitution," Harvard University professor, Harvey C. Mansfield concludes his comments on the political science of The Federalist with these words: "I am aware that I have dealt with only a few books in social science and those are not the most recent, but I am persuaded that they are neither incidental nor obsolete. Social science is all around us; it is a rubric that covers many diverse individuals and activities. Yet precisely because of this diversity, its general and remarkable attention to the Constitution cannot be accidental. Those who want to take refuge in this diversity still have to take thought for what they are involved in. If they should have doubts, the political science of The Federalist beckons as an attractive and impressive alternative." (Allan Bloom, editor. Confronting the Constitution. Washington, D.C.: American Enterprise Institute, 1990, p. 436.)

The Federalist has acted as the intellectual beacon for the United States Constitution since it was written in 1787. This set of eighty-five essays, written during the ratification debate, explained and supported the new Constitution. Thomas Jefferson proclaimed The Federalist, "The best commentary on the principles of government which was ever written." (Letter from Jefferson to James Madison, 18 November 1788. The Papers of Thomas Jefferson, Vol. 14, Oct. 1788 to Mar. 1789. Julian Boyd, editor. Princeton, NJ: Princeton University Press, 1958, pp. 187-190.)

In a letter to Alexander Hamilton, George Washington wrote the following about The Federalist: "As the perusal of the political papers under the signature of Publius has afforded me great satisfaction, I shall certainly consider them as claiming a most distinguished place in my library. I have read every performance which has been printed on one side and the other of the great question lately agitated (so far as I have been able to obtain them) and, without an unmeaning compliment I will say that I have seen no other so well calculated (in my judgement) to produce conviction on the unbiased mind, as the Production of your Triumvirate -- when the transient circumstances and fugitive performances which attended this crisis shall have disappeared, that work [The Federalist] will merit the notice of Posterity; because in it are candidly discussed the principles of freedom and the topics of government, which will always [be] interesting to mankind so long as they shall be connected in Civil Society." (Letter from Washington to Alexander Hamilton, 28 August 1788. The Papers of Alexander Hamilton, Vol. V, June 1788-Nov. 1789. Harold C. Syrett, editor. New York, NY: Columbia University Press, 1962, pp. 206-208.)

James Madison, one of the authors of The Federalist, developed such a strong faith in the American concept of free government that he dreamed of a time when it might spread throughout the world. He wrote that, "The free system of government we have established is so congenial with reason, with common sense, and with a universal feeling, that it must produce...a desire of imitation...[that) our country, if it does justice to itself, will be the workshop of liberty to the...World..." (Quoted in The Federalist in the Curriculum, a paper presented by John J. Patrict at the Master Class for Teachers held at James Madison's home, Montpelier, on 29 June 1989. The program was sponsored by the National Trust for Historic Preservation.)

But according to John Patrick, Director of the Social Studies Development Center at Indiana University, "Our country cannot become the workshop of liberty that Madison desired unless each new generation in this country develops a reasoned commitment to the principles of free government in our most fundamental public documents, foremost of which are the Declaration of Independence, the Constitution, and The Federalist. This reasoned commitment, of course, will be the consequence of effective civic education." (John Patrick, The Federalist in the Curriculum, 1989, pp. 19-20.)

Patrick believes that a strong case can be made for including The Federalist in our nation's high school social studies curriculum. He contends that The Federalist papers: (1) include the keys to knowledge of constitutional government and citizenship in the United States; (2) reflect core values in our civic culture; and (3) are connected to the curriculum in history, government, and civics. Patrick also believes that The Federalist can be used by teachers and students to find insightful and provocative responses to the paradoxical problems of constitutional democracy: majority rule with minority rights, public order and private rights, national sovereignty with states' rights, and national security with personal liberty. Examination of perennial constitutional problems posed in The Federalist, and the historical and current issues associated with them, requires knowledge of first principles of constitutional government in the United States, such as popular sovereignty, federalism, republicanism, separation of powers, checks and balances, limited government, rule of law, personal liberty, private rights, common good, and so forth. The ideas of The Federalist are familiar to civic educators, because they are emphasized in statements of educational goals and in syllabi for courses in history and government. They are embedded in the curriculum of our schools. (John Patrick, The Federalist in the Curriculm, 1989, p. 10.)

As a legacy of the ratification debates, The Federalist is extraordinary. As a source of insightful and provocative responses to the problems that confront our constitutional democracy it is exquisite. In the words of Professor Mansfield, it is "neither incidental or obsolete."

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But as an explanation of the genesis and meaning of the American political process, The Federalist needs to be complemented by the work of a complex and diverse group that has come to be called the Anti-Federalists. And although they lost the debate over the Constitution because they had the weaker argument, "they were, as Publius said, trying to reconcile contradictions." (Herbert J. Storing. The Complete Anti-Federalist, Vol. 1. Chicago, IL: The University of Chicago Press, 1981, p. 71.)

In 1963, Herbert J. Storing wrote to the University of Chicago Press, proposing an edition of Anti-Federalist writings. In 1977, some fourteen years after he began the project, Storing delivered his monumental work, The Complete Anti-Federalist, to the University of Chicago Press for publication. When he died, in September 1977, the copy editing had barely begun. But under the direction of his former student and friend, Murray Dry, the project was completed and stands as a full and adequate account of the main lines, the principles, and the grounds of the Anti-Federalist position. Taken from the introduction to The Complete Anti-Federalist, this is what Storing said about their contribution to our Constitution and political process:

> The Constitution of the United States was viewed by the founding generation as distinctive, even unique, in the extent to which it was the product of deliberation. Most previous foundings seemed to have been the result of chance or the edict of one all-powerful man. But the United States Constitution was framed by a numerous and diverse body of statesmen, sitting for over three months; it was widely, fully, and vigorously debated in the

country at large; and it was adopted by (all things considered) a remarkably open and representative procedure. Viewed in this light, those who opposed the Constitution must be seen as playing an indispensable if subordinate part in the founding process. They contributed to the dialogue of the American founding. To take only the most obvious case, the Constitution that came out of the deliberations of 1787 and 1788 was not the same Constitution that went in; for it was accepted subject to the understanding that it would be amended immediately to provide for a bill of rights. Moreover, the founding of a nation does not end with the making of a constitution. The Constitution did settle many questions, and it established a lasting structure of rules and principles--we do not adopt the current cant that fundamental law is shapeless stuff to be formed at the will by future generations. But it did not settle everything; it did not finish the task of making the American polity. The political life of the community continues to be a dialogue in which the Anti-Federalist concerns and principles still play an important part.

The Anti-Federalists are entitled, then, to be counted among the Founding Fathers, in what is admittedly a somewhat paradoxical sense, and to share in the honor and the study devoted to the founding. In general, however, they have not enjoyed such a position. Champions of a negative and losing cause, they have found only a cramped place in the shadow of the great constitutional accomplishments of 1787...

[It is important to] explore the different levels of Anti-Federal theorizing, working our way critically through and if necessary beyond them, but always with the idea that the Anti-Federalists may have something to teach. Because the American founding took the form of a debate or dialogue, Anti-Federal thought is best examined within the movement and different levels of that dialogue. For this reason it will be necessary to take some note of the Federalist as well as the Anti-Federalist side of the debate, but the purpose is to present only so much of what the Anti-Federalists were against as is necessary to understand what they were for.

In beginning with the question of what the Anti-Federalists were for, we are not, it must be admitted, adhering to the aim of presenting the Anti-Federalist argument as it presented itself. The Anti-Federalists were primarily against the Constitution. We do remain true to our aim in a deeper and more significant sense, however, because the Anti-Federalists themselves understood their negative conclusions about the

> Constitution to be derived from a positive theory or set of political principles. The aim, then, will be to give a sympathetic, critical, and full account of the fundamental Anti-Federalist position.
>
> [The Anti-Federalists] did not fail to see the opportunity for American nationhood that the Federalists seized so gloriously, but they could not join in grasping it. They doubted; they held back; they urged second thoughts. This was, however, not a mere failure of will or lack of courage. They had reasons, and the reasons have weight. They thought--and it cannot easily be denied--that this great national opportunity was profoundly problematical, that it could be neither grasped nor let alone without risking everything. The Anti-Federalists were committed to both union and the states; to both the great American republic and the small, self-governing community; to both commerce and civic virtue; to both private gain and public good. At its best, Anti-Federal thought explores these tensions and points to the need for any significant American political thought to confront them; for they were not resolved by the Constitution but are inherent in the principles and traditions of American political life. (Herbert J. Storing. The Complete Anti-Federalist, Vol. 1., 1981, pp. 3-6.)

This lesson set deals with what Robert Rutland called, the birth of the bill of rights. (Robert A. Rutland. The Birth of the Bill of Rights. Boston, MA: Northeastern University Press, 1983.) Initially, the lessons will introduce students to the positions taken by prominent Federalists and Anti-Federalists over the need for a bill of rights. These activities will prepare students for a subsequent lesson that creates a mock ratifying convention in which class members role play leading Federalists and Anti-Federalists who are debating a proposed amendment that would add a bill of rights to the Constitution of 1787.

THIS LESSON SET includes four Teaching plans and accompanying Lessons for students: (a) No. 1: Why the

Federalists Opposed a Bill of Rights and Favored the New Constitution of 1787; (b) No. 2: Jefferson and Madison on the Need for a Bill of Rights -- Personal Letters as Primary Resources; (c) No. 3: Why the Anti-Federalists Favored a Bill of Rights and Opposed the New Constitution of 1787; and (d) No. 4: A Mock Ratification Convention: Is a Bill of Rights Necessary?

LESSON 1: TEACHING PLAN
Why the Federalists Opposed a Bill of Rights And Favored the New Constitution of 1787

Objectives

Students are expected to

1) identify and comprehend a Federalist position on the question of a bill of rights;
2) examine and explain ideas and information pertaining to the inadvisability of adding a bill of rights to the Constitution of 1787 in a speech given by James Wilson to the citizens of Philadelphia and in Alexander Hamilton's The Federalist No. 84;
3) evaluate the position taken by both Wilson and Hamilton on a bill of rights.

Estimation of Time Needed to Complete This Lesson: No More Than Two Class Periods.

Opening the Lesson

Ask students: What is a bill of rights? Why do you think a bill of rights was added to the United States Constitution? Who were the Federalists? Did they favor or oppose a bill of rights? Provide students with an overview of "The English Beginnings." (Robert Rutland, The Birth of the Bill of Rights, 1983, pp. 3-12.) Try to reinforce knowledge that the students bring to the lesson from other sources or experiences.

Take a few minutes to review the content of the first ten amendments to the United States Constitution. Ask students: How does the Bill of Rights protect you? What specific examples can you provide us with? Do we really need a Bill of Rights?

Developing the Lesson

Have students read the excerpts from Wilson's speech and Hamilton's essay. Check student's comprehension of main ideas in the reading assignment by requiring them to complete the exercise that follows each document. Conduct a classroom discussion on the questions that follows each document. Insist that students explain and support their answers with reasons drawn from the documents. Emphasize Wilson's belief that every power not granted to Congress was reserved by the people and Hamilton's contention that a bill of rights was not only unnecessary, "but would even be dangerous." Make sure that each student understands and can paraphrase the arguments made by both Wilson and Hamilton. The statements in item 3 that agree with Wilson are: b, c, and e.

Concluding the Lesson

As homework, have students write an essay entitled, "Why the Federalists Opposed a Bill of Rights." Require students to use material from Wilson's speech and Hamilton's *Federalist* No. 84. At the beginning of the next class period have students exchange papers and write a critique of their peer's work. Ask for several volunteers to read an essay that they have judged to be exceptional in terms of its content and use of the language. Make sure that any unanswered questions are addressed before proceeding to the next lesson.

LESSON 1
Why the Federalists Opposed a Bill of Rights And Favored the New Constitution of 1787

Introduction to James Wilson's Ideas on a Bill of Rights

Following the adjournment of the Constitutional Convention in Philadelphia (September 17, 1787) many people began to speculate about the form of the proposed government, a government that had been developed in a shroud of secrecy. A number of people, in speeches or in written words, began to criticize the new Constitution, the government it would create, and those who supported its ratification. These critics became known as the Anti-Federalists.

> (Anti-Federalist, Antifederalist, and anti-Federalist are all used to denote those who opposed the Constitution of 1787. The author of this lesson set is convinced that "Anti-Federalist" is the best rendering of the name. He is in agreement with Herbert J. Storing, the author of The Complete Anti-Federalist, who believes that the spelling balances the positive and negative sides by giving the group--or position, a proper name, thereby emphasizing its character as opposition. Although the Anti-Federalists were primarily against the Constitution, they understood that their negative conclusions about the document were derived from a positive political theory or set of political principles. The term "Anti-Federalist" suggests more cohesion than actually existed, while "anti-Federalist" suggests a merely negative, dependent unit.)

One of the first Federalists to perceive the potency of the Anti-Federalist demand for a bill of rights was a delegate to the Federal Convention from Pennsylvania, James Wilson. On Saturday 6 October 1787, Wilson gave a speech to the citizens of Philadelphia. His early answer to the opposition constitutes one of the most notable of all the

Federalist replies to the question which had alarmed so many Americans: Why didn't the Constitution include a bill of rights? So forceful was Wilson's rebuttal that it was maintained as the principal Federalist answer to the demand for a bill of rights until the final pro-Constitution argument on the subject was written by Alexander Hamilton in The Federalist No. 84. Less than one month after the Federal Convention had adjourned, Wilson spoke on behalf of the Constitution. In his defense of the document he quickly turned to the omission of a bill of rights. The power of Congress would come from positive grants explicitly stated in the Constitution. Wilson said that every power not granted to Congress was reserved by the people. (Robert Rutland, The Birth of the Bill of Rights, 1983, p. 132.) Excerpts from his speech, taken from a report in The Maryland Gazette, Thursday 25 October 1787, are presented below.

MR. JAMES WILSON: AN ADDRESS TO THE CITIZENS OF PHILADELPHIA ON OCTOBER 6, 1787 -- REPORTED ORIGINALLY IN THE PENNSYLVANIA HERALD ON 9 OCTOBER 1787 AND SUBSEQUENTLY REPRINTED IN THE MARYLAND GAZETTE ON 25 OCTOBER 1787 FROM WHICH THIS TRANSCRIPT WAS TAKEN.

Mr. Chairman and fellow citizens,

Having received the honor of an appointment to represent you in the late convention, it is perhaps, my duty to comply with the request of many gentlemen whose characters and judgements I sincerely respect, and who have urged, that this would be a proper occasion to lay before you any information which will serve to explain and elucidate the principles and arrangements of the constitution, that has been submitted to the consideration of the United States. I confess that I am unprepared for so extensive and so important a disquisition; but the insidious attempts which are clandestinely and industriously made to pervert and destroy the new plan, induce me the more readily to engage in its defense; and the impressions of four months constant attention to the subject, have not been so easily effaced as to leave me without an answer to the objections which have been raised.

It will be proper, however, before I enter into the refutation of the charges that are alleged, to mark the leading discrimination between the state constitutions, and the constitution of the United States. When the people established the powers of legislation under their separate governments they invested their representatives with every right and authority which they did not in explicit terms reserve; and therefore upon every question, respecting the jurisdiction of the house of assembly, if the frame of government is silent, the jurisdiction is efficient and complete. But in delegating federal powers, another criterion was necessarily introduced, and the congressional authority is to be collected, not from tacit implications, but from the positive grant expressed in the instrument of union. Hence it is evident, that in the former case every thing which is not reserved is given, but in the latter the reverse of the proposition prevails, and everything which is not given, is reserved. This distinction being recognized, will furnish an answer to those who think the omission of a bill of rights, a defect in the proposed constitution: for it would have been superfluous and absurd to have stipulated with a federal body of our own creation, that we should enjoy those privileges, of which we are not divested either by the intention or the act, that has brought that body into existence. For instance, the liberty of the press, which has been a copious force of declamation and opposition, what control can proceed from the federal government to shackle or destroy that sacred palladium of national freedom? If indeed, a power similar to that which has been granted for the regulation of commerce, had been granted to regulate literary publications, it would have been as necessary to stipulate that the liberty of the press should be preserved inviolate, as that the impost should be general in its operation... Another objection that has been fabricated against the new constitution, is expressed in this disingenuous form -- "the trial by jury is abolished in civil cases." I must be excused, my fellow citizens, if, upon this point, I take advantage of my professional experience, to detect the futility of the assertion. Let it be remembered, then, that the business of the federal constitution was not local, but general; not limited to the views and establishments of a single state, but co-extensive with the continent, and comprehending the views and establishments of thirteen independent sovereignties. When, therefore, this subject was in discussion, we were involved in difficulties, which pressed on all sides, and no precedent could be discovered to direct our course. The cases open to a jury, differed in the different states; it was therefore impracticable on that ground to have made a general rule. The want of uniformity would have rendered any reference to the practice of the states idle and useless; and it could not, with any propriety, be said, that "the trial by jury shall be as heretofore," since there has never existed any federal system of jurisprudence, to which the declaration could relate. Besides, it is not in all cases that the trial by jury is adopted in civil questions, for causes depending in courts of admiralty, such as related to maritime captures, and such as are agitated in the courts of equity, do not require the intervention of that tribunal. How, then was the line of discrimination to be drawn? The convention found the task too difficult for them, and they left the business as it stands, in the fullest confidence that no danger could possibly ensue, since the proceedings of the supreme court are to be regulated by the congress, which is a faithful representation of the people; and the oppression of government is effectually barred, by declaring that in all criminal cases, the trial by jury shall be preserved...

After all, my fellow citizens, it is neither extraordinary or unexpected, that the constitution offered to your consideration, should meet with opposition. It is in the nature of man to pursue his own interest, in preference to the public good; and I do not mean to make any personal reflections, when I add, that it is in the interest of a very numerous, powerful and respectable body to counteract and destroy the excellent work produced by the late convention. All the officers of government, and all the appointments for the administration of justice and the collection of the public revenue, which are translated from the individual to the aggregate sovereignty of the states, will necessarily turn the stream of influence and emolument into a new channel. Every person therefore, who either enjoys, or expects to enjoy, a place of profit under the present establishment, will object to the proposed innovation; not in truth, because it is injurious to the liberties of the country, but because it affects his schemes of wealth and consequences. I will confess indeed, that I am not a blind admirer of this plan of government, and that there are some parts of it, which if my wish had prevailed, would certainly have altered. But when I reflect how widely men differ n their opinions, and that every man (and the observation applies likewise to every state) has an equal pretension to assert his own, I am satisfied that any thing nearer to perfection could not have been accomplished. If there are errors, it should be remembered, that the seeds of reformation are sown in the work itself, and the concurrence of two thirds of the congress may at any time introduce alterations and amendments. Regarding it then in every point of view, with a candid and disinterested mind, I am bold to assert, that it is the best form of government which has ever been offered to the world.

Answer the Following Questions About James Wilson's Speech to the Citizens of Philadelphia.

1. Why does Wilson feel compelled to defend the new Constitution?

2. What distinction does Wilson make between the powers given by the people to their state governments on the one hand, and their new federal government on the other?

3. Consider your answer to the previous question. According to Wilson, why doesn't the new Constitution need a bill of rights?

4. Who will protect a person's right to a trial by jury under the new Constitution?

5. Examine the following statements and decide which items agree or disagree with Wilson's ideas. Make a check next to each statement that agrees with Wilson. By ready to refer to his speech to the citizens of Philadelphia to explain and support your answers.

_____ a. The new Constitution will be unanimously ratified.

_____ b. Under the new Constitution the people retain all powers not expressly granted to the federal government.

_____ c. Unlike the grant of power to regulate interstate commerce, no such power has been given to the federal government to limit the liberty of the press.

_____ d. The right to a trial by jury will be protected by the Federal government under the new Constitution.

_____ e. Those who oppose the Constitution do so not because it will be injurious to the liberties of the country, but because it affects their schemes of wealth and consequence.

Alexander Hamilton and Federalist No. 84

Though the Constitution is often forgotten in the rush of affairs, its importance is reaffirmed in those times when a return to political "first principles" is needed. Many avenues of study are available to the student of the Constitution of 1787: the major decisions of the Supreme Court, speeches and writings of American statesmen, records of the Federal Convention, state debates on ratification, the writings of the Anti-Federalists, and Joseph Story's Commentaries on the Constitution. But none of these, according to our tradition, has the same authority as The Federalist. (Thomas S. Engeman, et. al., The Federalist Concordance, Chicago: The University of Chicago Press, 1988, intro.)

Thomas Jefferson wrote that The Federalist was "the best commentary on the principles of government which was ever written." A Harvard University professor, Harvey Mansfield, recently wrote that The Federalist is still "an attractive and impressive source of wisdom about our nation's Constitution and system of government."

Many historians have long regarded Alexander Hamilton's final summation of the Federalist reply to the bill of rights clamor in Federalist No. 84, as the most effective answer to the delicate question. Actually, Hamilton struck at the Anti-Federalist charges in both Federalist No. 83 and No. 84, which were originally published on 28 May 1788. But many Anti-Federalists did not read them until the New York ratifying convention had already completed its work.

Examine the following excerpt from Federalist No. 84. This essay has been judged by some scholars to be among Hamilton's best. What is your judgement of this essay? What are his main arguments? Do you generally agree or disagree with him? Why?

HAMILTON: (FEDERALIST #84)

...The most considerable of these remaining objections is, that the plan of the convention contains no bill of rights. Among other answers given to this, it has been upon different occasions remarked, that the constitutions of several of the states are in a similar predicament. I add, that New-York is of this number. And yet the opposers of the new system in this state, who profess an unlimited admiration for its constitution, are among the most intemperate partizans of a bill of rights. To justify their zeal in this matter, they allege two things; one is, that though the constitution of New-York has no bill of rights prefixed to it, yet it contains in the body of it various provisions in favour of particular privileges and rights, which in substance amount to the same thing; the other is, that the constitution adopts in their full extent the common and statute law of Great Britain, by which many other rights not expressed in it are equally secured.
To the first I answer, that the constitution proposed by the convention contains, as well as the constitution of this state, a number of such provision.

Independent of those, which relate to the structure of the government, we find the following: Article I. section 3. clause 7. "Judgement in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be *liable and subject to indictment, trial, judgement and* punishment, according to law." Article I. section 9. clause 2. "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Article I. section 9. clause 3. "No bill of attainder or ex post facto law shall be passed." Article I. section 9. clause 7 (This is clause 8 in the present-day Constitution.) "No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign state." Article III. section 2. clause 3. "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed." Article III. section 3. (clause 1 in the present-day Constitution.) "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." And Article III. section 3. clause 3 (which is Clause 2 in the present-day Constitution). "The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

...The establishment of the writ of habeas corpus, the prohibition of ex post facto laws, and of titles of nobility, to which we have no corresponding provisions in our constitution, are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments have been in all ages the favorite and most formidable instruments of tyranny.

...Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people.

...It has been several times truly remarked, that bills of rights are in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was Magna Charta, obtained by the Barons, sword in hand, from king John. Such were the subsequent confirmations of that charter by subsequent princes. Such was the petition of right assented to by Charles the First, in the beginning of his reign. Such also was the declaration of right presented by the lords and commons to the prince of Orange in 1688, and afterwards thrown into the form of an act of parliament, called the bill of rights. It is evident, therefore, that according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing, and as they retain every thing, they have no need of particular reservations. 'We the People of the United States, to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.' Here is a better recognition of popular rights than volumes of those aphorisms which make the principal figure in several of our state bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

...I go further, and affirm that bills of rights, in the sense and in the extent in which they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers which are not granted; and on this very account, would afford a [colorful] pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why for instance, should it be said, that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?

...There remains but one other view of this matter to conclude the point. The truth is, after all the declamation we have heard, that the constitution is itself in every rational sense, and to every useful purpose, a bill of rights. The several bills of rights, in Great Britain, form its constitution, and conversely the constitution of each state is its bill of rights. And the proposed constitution, if adopted, will be the bill of rights of the union. Is it one object of a bill of rights to declare and specify the political privileges of the citizens in the structure and administration of the government? This is done in the most ample and precise manner in the plan of the convention, comprehending various precautions for the public security, which are not to be found in any of the state constitutions. Is another object of a bill of rights to define certain immunities and modes of proceeding, which are relative to personal and private concerns? This we have seen has also been attended to, in a variety of cases, in the same plan. Adverting therefore to the substantial meaning of a bill of rights, it is absurd to allege that it is not to be found in the work of the convention.

Answer the following questions about Hamilton's Federalist No. 84. Be prepared to justify or give reasons for your answers with references to specific parts of this document.

1. According to Hamilton, what do many state constitutions have in common with the new Constitution proposed by the Federal Convention?

2. How does Hamilton think these parts of the proposed Constitution will protect individual liberties?

Article I	Section 3	Clause 7
Article I	Section 9	Clause 2
Article I	Section 9	Clause 3
Article I	Section 9	Clause 7
Article III	Section 3	Clause 1--in the present Constitution
Article III	Section 3	Clause 2--in the present Constitution

3. In terms of needing a bill of rights, what sets citizens of the United States apart from their British counterparts, according to Hamilton?

4. Based on the sixth paragraph in this excerpt from The Federalist No. 84 (...I go further, and affirm), how would you compare the arguments made by Hamilton and his fellow

Federalist from Philadelphia, James Wilson?

5. Do you agree or disagree with Hamilton when he says "that the constitution is itself in every rational sense, and to every useful purpose, a bill of rights"?

Homework Package for Lesson 1 -- Why the Federalists Opposed a Bill of Rights

The date is 4 June 1788. you have recently moved from Philadelphia, Pennsylvania to Williamsburg, Virginia and have been hired as a writer for The Virginia Gazette. While in Philadelphia you were in the audience the night James Wilson gave his great speech in defense of the new Constitution. Knowing this, one of the Gazette's publishers, Mr. Dixon, calls you into his office. He exchanges some pleasant conversation with you and hands you a copy of Alexander Hamilton's Federalist LXXXIV, that has just arrived in a satchel from New York. Printed for the first time on 28 May 1788 in New York, most Virginians have yet to read Mr. Hamilton's words.

Mr. Dixon is a staunch, and very stout, Federalist. He looks you square in the eye and says that for the good of the country, Virginia must ratify the proposed Constitution. He tells you that the Anti-Federalists, like George Mason and Richard Henry Lee, are calling for a bill of rights. Dixon believes, however, that the document must be ratified without amendment of the country will loose its chance to become a great nation.

Your publisher gives you an assignment to write an editorial that explains why a bill of rights is not necessary. He smiles and tells you that he expects to see your finished product at the beginning of the next work day.

LESSON 2: TEACHING PLAN
Jefferson and Madison on the Need for a Bill of Rights
Personal Letters as Primary Resources

Objectives

Students are expected to

1) identify and comprehend ideas on constitutional government and personal liberty in personal correspondence between Thomas Jefferson and James Madison;
2. analyze and evaluate ideas held by Jefferson and Madison on a bill of rights;
3. develop an appreciation of the role that Jefferson played in the ratification process;
4. develop an appreciation of the circumstances that surrounded Madison's initial opposition and eventual authorship of the Bill of Rights.

Estimation of Time Needed to Complete This Lesson: No More Than One and a Half Class Periods

Opening the Lesson

Ask the students if they like to write letters to their friends? Do they think letter writing is more or less popular than it was in the eighteenth century? Why is it more or less popular? How does letter writing compare with other forms of interpersonal communication as a means of conveying complex ideas and emotions? (Have students compare the advantages and disadvantages of letter writing verses face to face conversation or telephone conversation.)

Invite students to speculate about the usefulness of letters in historical research. Ask students what advantages or disadvantages might be expected by the historian who uses letters as a primary resource. Then ask students to read excerpts from Thomas Jefferson's letter to James Madison (Paris, 20 December 1787) and Madison's letter to Jefferson (New York, 17 October 1788). Require students to respond to the questions that follow each document in preparation for a classroom discussion.

Developing the Lesson

Conduct a discussion of the letters exchanged between Thomas Jefferson and James Madison. Require students to support and justify their answers with evidence drawn from specific parts of the primary sources in this lesson or Lesson 1. Talk with students about the friendship that existed between Jefferson and Madison and how important it is to have a friend or friends who you can explore ideas and emotions with.

Concluding the Lesson

Ask students to imagine that Thomas Jefferson and James Madison are still alive. Conduct a classroom discussion that focuses on the following question: If Jefferson and Madison were still writing letters to each other, what topic or current issue would they most likely be conversing about? Although the discussion will be wide ranging, try to have the students gradually focus their attention on issues that have a civil liberties orientation. Ask students how they think Jefferson or Madison would feel about the question or issue being discussed. Ask the students: Does this issue relate in any way to the Bill of Rights? And finally, whose arguments do you find most compelling: Wilson and Hamilton or Jefferson and Madison?

LESSON 2
Jefferson and Madison on the Need for a Bill of Rights
Personal Letters as Primary Resources

Introduction to Jefferson's Position on a Bill of Rights

According to Dumas Malone, his principle biographer, few other American statesmen have been such careful and unremitting students of political thought and history as Thomas Jefferson was, or more concerned with the ultimate ends. Though pained and angered when the free press made him the victim of its license, he was a passionate advocate of human liberty and laid supreme stress on the individual. As a philosophical statesman rather than a political philosopher, he contributed to democracy and liberalism a faith rather than a body of doctrine. By his works alone he must be adjudged one of the greatest of all Americans, while the influence of his energizing faith is immeasurable. (Dumas Malone, in Thomas Jefferson: A Reference Biography, edited by Merril D. Peterson, New York: Charles Scribner's Sons, 1986, p. 24.)

During his lifetime Jefferson was minister to France, Secretary of State, Vice-President, and President of the United States. He was the author of the Declaration of Independence and the Virginia statute for religious liberty. At the time of his death, Jefferson left behind a collection of written documents that scholars are still editing today. In his personal correspondence alone, Jefferson left behind a literary legacy that includes over 55,000 letters.

During his lifetime Jefferson enjoyed a lively correspondence with his friend and political contemporary, James Madison. While the Federal Convention convened in Philadelphia and many of the state conventions debated the topic of ratification, Jefferson was serving as Minister to France. During that period Madison wrote frequently to Jefferson in an attempt to keep his friend abreast of the current political tide, to use him as a sounding board, and to solicit his opinions on important issues. Read the following excerpt from Jefferson's letter to Madison in which he reacts to the new Constitution. Answer the questions that follow this document.

THOMAS JEFFERSON: A LETTER WRITTEN TO JAMES MADISON

Dear Sir, Paris Dec. 20, 1787

My last to you was of Oct. 8, by the Count de Moustier. Yours of July 18. Sep. 6. & Oct. 24. have been successively received, yesterday, the day before & three or four days before that. I have only had time to read the letters, the printed papers communicated with them, however interesting, being obliged to lie over till I finish my dispatches for the packet, which dispatches must go from hence the day after tomorrow. I have much to thank you for...

The season admitting only of operations in the Cabinet, and these being in a great measure secret, I have little to fill a letter. I will therefore make up the deficiency by adding a few words on the Constitution proposed by our Convention. I like much the general idea of forming a government which should go on of itself peaceably, without needing continual recurrence to the state legislatures. I like the organization of the government into Legislative, Judiciary & Executive. I like the power given to the Legislature to levy taxes, and for that reason solely approve of the greater house being chosen by the people directly. For tho' I think a house chosen by them will be very illy qualified to legislate for the Union, for foreign nations &c.

yet this evil does not weigh against the good of preserving inviolate the fundamental principle that the people are not to be taxed but by representatives chosen immediately by themselves. I am captivated by the compromise of the opposite claims of the great & little states, of the latter to equal, and the former to proportional influence. I am much pleased to with the substitution of the method of voting by persons, instead of that of voting by states: and I like the negative given to the Executive with a third of either house, though I should have liked it better had the Judiciary been associated for that purpose, or invested with a similar and separate power. There are other good things of less moment. I will now add what I do not like. First the omission of a bill of rights providing clearly & without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal & unremitting force of the habeas corpus laws, and trials by jury in all matters of fact triable by the laws of the land & not by the law of the Nations. To say, as mr. Wilson does, that a bill of rights was not necessary because all is reserved in the case of the general government which is not given, while in the particular ones all is given which is not reserved, might do for the Audience to whom it was addressed, but is surely a gratis dictum, opposed by strong inferences from the body of the instrument, as well as from the omission of the clause of our present confederation which had declared that in express terms. It was a hard conclusion to say because there has been no uniformity among the states as to the cases triable by jury, because some have been so incautious as to abandon this mode of trial, therefore the more prudent states shall be reduced to the same level of calamity. It would have been much more just & wise to have concluded the other way that as most of the states had judiciously preserved this palladium, those who had wandered should be brought back to it, and to the established general right instead of general wrong. Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, & what no just government should refuse or rest on inference......

From The Papers of James Madison, Vol. 10, Robert A. Rutland, editor-in-chief, University of Chicago Press, 1977.

Answer the questions below about Thomas Jefferson's letter to James Madison. Refer to the document to back up and explain your answers.

1. What does Thomas Jefferson like about the new

Constitution? Paraphrase and list four of his positive comments.

2. According to Jefferson, what liberties should be protected by a bill of rights?

3. Why doesn't Jefferson agree with James Wilson's claim that a bill of rights is not necessary?

Madison Writes to Jefferson on a Bill of Rights

James Madison is commonly thought of as the author of the Bill of Rights, and with good reason. Most of the first ten amendments came substantially from his hand. Nevertheless, there is more than enough irony in this reputation. He made no known effort to incorporate any specific guarantees of individual rights into the Constitution at the Convention of 1787 beyond a few scattered comments scattered through the text. He made no apparent effort to reinforce the very few efforts of others to add provisions as the work of the Convention was nearing completion. Until 1789, he defended this omission and was slowly convinced that the movement for amendments would have to be satisfied after ratification of the original document, if public confidence in the new government were to be established. Furthermore, neither the final form in which the amendments were placed in the Constitution, nor their substance, nor their efforts in some cases were fully consistent with his recommendations in 1789. Certainly, the

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two guarantees which he thought were most widely believed to be in need of protection from the new government, "the freedom of the press and the rights of conscience, those choicest privileges of the people," have not been construed as strictly as he wished. Nevertheless, it is important to distinguish between Madison the reluctant architect of the Bill of Rights and the ardent advocate of fundamental freedoms embodied in the First Amendment. (Robert J. Morgan, James Madison on the Constitution and the Bill of Rights, New York: Greenwood Press, 1988, p. 131.)

There was very little opportunity at the Constitutional Convention for Madison to support a bill of rights of the conventional sort. The Convention's charge was to enlarge, not restrict, the powers of the federal government. With that in mind, read the following excerpt of Madison's letter to Jefferson and respond to the questions that follow its conclusion.

JAMES MADISON--A LETTER TO THOMAS JEFFERSON WRITTEN ON 17 OCTOBER 1788 FROM NEW YORK

New York Oct. 17, 1788

Dear Sir

I have written a number of letters to you since my return here, and shall add this by another casual opportunity just notified to me by Mr. St. John. Your favor of July 31. came to hand the day before yesterday. The pamphlets of the Marquis Condorcet & Mr. Dupont referred to have also been received...

The little pamphlet herewith enclosed will give you a collective view of the alterations which have been proposed for the new Constitution. Various and numerous as they appear they certainly omit many of the true grounds of opposition. The articles relating to Treaties--to paper money, and to contracts, created more enemies than all the errors in the System positive & negative put together. it is true nevertheless that not a few, particularly in Virginia have contended for the proposed alterations from the most honorable & patriotic motives; and that among the advocates for the Constitution, there are some who wish for further guards to public liberty & individual rights. As far as these may consist of a constitutional declaration of the most essential rights, it is probable they will be added; though there are many who think such addition unnecessary, and not a few who think it misplaced in such a Constitution. There is scarce any point on which the party in opposition is so much divided as to its importance and its propriety. My own opinion has always been in favor of a bill of rights; provided it be so framed as not to imply powers not meant to be included in the enumeration. At the same time I have never thought the omission a material defect, nor been anxious to supply it even by subsequent amendment, for any other reason than that it is anxiously desired by others. I have favored it because I supposed it might be of use, and if properly executed could not be of disservice. I have not viewed it in an important light (1) because I conceive that in a certain degree, though not in the extent argued by Mr. Wilson, the rights in question are reserved by the manner in which the federal powers are granted. (2) because there is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude. I am sure that the rights of Conscience in particular, if submitted to public definition would be narrowed much more than they are likely ever to be by an assumed power. One of the objections in New England was that the Constitution by prohibiting religious tests opened a door for Jews Turks & infidels. (3) because the limited powers of the federal Government and the jealousy of the subordinate Governments, afford a security which has not existed in the case of the State Governments, and exists in no other. (4) because experience proves the inefficacy of a bill of rights on those occasions when its control is most needed. Repeated violations of these parchment barriers have been committed by overbearing majorities in every State. In Virginia I have seen the bill of rights violated in every instance where it has been opposed to a popular current. Notwithstanding the explicit provision contained in that instrument for the rights of Conscience it is well known that a religious establishment would have taken place in that State, if the legislative majority had found as they expected, a majority of the people in favor of the measure; and I am persuaded that if a majority of the people were now of one sect, the measure would still take place and on narrower ground than was then proposed, notwithstanding the additional obstacle which the law has since created. Wherever the real power of a Government lies, there is the danger of oppression. In our

Governments the real power lies in the majority of the Community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents. This is a truth of great importance, but not yet sufficiently attended to: and is probably more strongly impressed on my mind by facts, and reflections suggested by them, than on yours which has contemplated abuses of power issuing from a very different quarter. Wherever there is an interest and power to do wrong, wrong will generally be done, and not less readily by a powerful & interested party than by a powerful and interested prince. The difference, so far as it relates to the superiority of republics over monarchies, lies in the less degree of probability that interest may prompt abuses of power in the former than in the latter; and in the security in the former against oppression of more than the smaller part of the society, whereas in the former it may be extended in a manner to the whole. The difference so far as it relates to the point in question--the efficacy of a bill of rights in controlling abuses of power--lies in this, that in a monarchy the latent force of the nation is superior to that of the sovereign, and a solemn charter of popular rights must have a great effect, as standard for trying the validity of public acts, and a signal for rousing & uniting the superior force of the community; whereas in a popular Government, the political and physical power may be considered as vested in the same hands, that is in a majority of the people, and consequently the tyrannical will of the sovereign is not [to] be controlled by the dread of an appeal to any other force within the community. What use then it may be asked can a bill of rights serve in popular Governments? I answer the two following which though less essential than in other Governments, sufficiently recommend the precaution. (1 The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion. (2) Altho' it be generally true as above stated that the danger [of] oppression lies in the interested majorities of the people rather than in usurped acts of the Government, yet there may be occasions on which the evil many spring from the latter sources; and on such, a bill of rights will be a good ground for an appeal to the sense of the community. Perhaps too there may be a certain degree of danger, that a succession of artful and ambitious rulers, may by gradual & well-timed advances, finally erect an independent Government on the subversion of liberty. Should this danger exist as all, it is prudent to guard against it, especially when the precaution can do no injury. At the same time I must own that I see not tendency in our governments to danger on that side. It has been remarked that there is a tendency in all Governments to an augmentation of power at the expense of liberty. But the remark as usually understood does not appear to me well founded. Power when it has attained a certain degree of energy and independence goes on generally to further degrees. But when below that degree, the direct tendency is to further degrees of relaxation, until the abuses of liberty beget a sudden transition to an undue degree of power. With this explanation the remark may be true; and in the latter sense only is it in my opinion applicable to the Governments in America. It is a melancholy reflection that liberty should be equally exposed to danger whether the Government have too much power, and that the line which divides these extremes should be so inaccurately defined by experience.

Supposing a bill of rights to be proper the articles which ought to compose it, admit of much discussion. I am inclined to think that absolute restrictions in cases that are doubtful, or where emergencies may overrule them, ought to be avoided. The restrictions however strongly marked on paper will never be regarded when opposed to the decided sense of the public; and after repeated violations in extraordinary cases, they will lose even their ordinary efficacy. Should a Rebellion or insurrection alarm the people as well as the Government, and a suspension of the habeas corpus be dictated by the alarm, no written prohibitions on earth would prevent the measure. Should an army in time of peace be gradually established in our neighborhood by Britain or Spain, declarations on paper would have as little effect in preventing a standing force for the public safety. The best security against these evils is to remove the pretext for them. With regard to monopolies they are justly classed among the greatest nuisances in Government. But is it clear that as encouragements to literary works and ingenious discoveries, they are not too valuable to be wholly renounced? Would it not suffice to reserve in all cases a right to the Public to abolish the privilege at a price to be specified in the grant of it? Is there not also infinitely less danger of this abuse in our Governments, than in most others? Monopolies are sacrifices of the many to the few. Where the power is in the few it is natural for them to sacrifice the many to their own partialities and corruptions. Where the power, as with us, is in the many not in the few, the danger can not be very great that the few will be thus favored. It is much more to be dreaded that the few will unnecessarily sacrificed to the many...

Js. Madison Jr

(Note: Many of the words and phrases in this letter were encoded by James Madison using a code Thomas Jefferson sent him on 11 May 1785.)

Answer the following questions about James Madison's letter to Thomas Jefferson.

1. James Madison says that he has always been in favor of a bill of rights; provided it be so framed as not to imply powers not meant to be included in the enumeration. What do you think he means by this comment?

2. Why didn't Madison view a bill of rights "in an important light" in regards to the new Constitution? (Paraphrase his four reasons for feeling the way he did.)

3. Where does Madison think the real danger to individual liberty would come from if not from the government?

4. Why is a bill of rights more important to people living in a monarchy than a republic (or popularly elected government)?

5. Even though Madison thinks that a bill of rights is more important in a monarchy than a republic, what benefits would be realized by the republic that had a bill of rights?

6. In his concluding comments on the need for a bill of rights, Madison writes that there are times when even a bill of rights will not protect a person's liberty. Describe one of those times and explain how Madison suggests that we deal with those "evils."

In a class discussion, respond to the following items about Jefferson and Madison's ideas about a bill of rights and the use of letters as a primary source.

1. What did you learn about Jefferson and Madison from their letters?

2. If they were alive today, what issues do you think they would be thinking and writing about? Do any of these items relate to the Bill of Rights?

3. Do you think Jefferson and Madison would be pleased with the current status of individual liberty in the United States?

4. Whose arguments do you find more compelling: James Wilson and Alexander Hamilton arguing against the need for a bill of rights or Thomas Jefferson and James Madison arguing for a bill of rights?

LESSON 3: TEACHING PLAN
Why the Anti-Federalists Favored a Bill of Rights And Opposed the New Constitution

Objectives

Students are expected to

1) identify and comprehend an Anti-Federalist position on a bill of rights;
2) examine and explain ideas and information pertaining to the advisability of adding a bill of rights to the Constitution of 1787 in documents related to the work of George Mason, Richard Henry Lee, The Federal Farmer, and Patrick Henry;
3) evaluate the position taken by leading Anti-Federalists on a bill of rights.

Estimation of Time Needed to Complete This Lesson: No More Than Three Class Periods

Opening the Lesson

Ask students for a definition of the word "opponent." (One that opposes another in battle, contest, controversy or debate: legislation that found rabid opponents in Congress.) Can you think of a synonym for the term opponent? (adversary, antagonist, opposer, opposition, competitor, enemy, resister) Do the words opponent or opposition have a positive or a negative connotation? Why is that? Have you heard of the term loyal opposition? What does it mean? Is it possible to be a loyal opponent? Can people oppose the government, Constitution, or Bill of Rights and still be loyal to the country?

Explain to the students that they are about to be introduced to members of a group who were referred to as the Anti-Federalists. These people opposed the new Constitution because they thought it would do a great harm to their local or state governments and to their individual liberties. (For a more detailed explanation of what the Anti-Federalists were for, refer to the lengthy quote from Herbert J. Storing's introduction to his seven volume masterpiece, The Complete Anti-Federalist, which was reprinted in the introduction of this lesson set.)

Developing the Lesson

Have students read the final draft of the Virginia Declaration of Rights (12 June 1776) and "Objections to the Constitution of Government Framed by the Federal Convention," written by George Mason; the excerpts from Richard Henry Lee's letter to Governor Edmund Randolph (16 October 1787); letters from the Federal Farmer to the Republican (20 January 1788--author unknown); and a speech given before the Virginia Ratifying Convention (16 June 1788) by Patrick Henry. Check student comprehension of the main ideas in each reading assignment by requiring them to complete the exercise at the end of each document. Conduct a classroom discussion on the questions and insist that students explain and support their answers with reasons or knowledge drawn from the documents. Emphasize George Mason's long standing dedication to the protection of individual liberties; Richard Henry Lee's early criticism of the new Constitution to Governor Edmund Randolph (who was one of the three delegates to the Federal Convention who did not sign the Constitution and who would wavered between the Federalist and Anti-Federalist positions during the Constitutional Era); The Federal Farmer's titanic effort to justify and claim the need for a bill of rights; and Patrick Henry's oratorical gift that was used so effectively to argue for a bill of rights.

The answers for items following Mason's Virginia Declaration of Rights are: a.-1; c.-6; d- 8; f.-9; g.-12; and j.-16.

Concluding the Lesson

Have students engage in an Anti-Federalist Forum on Protecting Human Liberty. Ask students to consider what they have learned about the positions taken by the Federalists and Anti-Federalists on the issue of a bill of rights. These opinions will be the focal point for a forum -- an open discussion about ideas and issues.

THE CORE QUESTION FOR THIS FORUM: IS A BILL OF RIGHTS ESSENTIAL TO A FREE SOCIETY?

What is the Federalist position on this core question?

What is the Anti-Federalist position on this core question?

In responding to these questions, identify the major strengths and weaknesses of each position and organize your answers around these key ideas. The key ideas of each person are the ones you have judged to be the most important strengths or weaknesses in his position on a bill of rights.

Decide which group, Federalist or Anti-Federalist, had the stronger position on the need for a bill of rights in a free society. Select and defend the stronger position in a classroom forum on the concept of individual liberty in the ratification debate of 1787-1788.

Conclude the forum by asking the following question: What can you learn about the importance of a strong or loyal opposition in a republican system of government?

LESSON 3
Why the Anti-Federalists Favored a Bill of Rights And Opposed the New Constitution

Introduction to the Anti-Federalist Position

After a summer of debate, three of the delegates to the Federal Convention in Philadelphia could not bring themselves to sign the document they had worked so long and hard to create. Along with Elbridge Gerry and Edmund Randolph, George Mason refused to sign the Constitution.

While Gerry and Randolph refused to sign because of concerns over issues related to free enterprise and States' Rights, Mason was dumbfounded that the Constitution contained no declaration of rights. He offered to draw up one, based on the Bill of Rights he had written for the state of Virginia, and he was turned down. One that issue alone he was constrained to withhold his signature. There were other objections, but foremost in his mind was the absence of a bill of rights. (Charles L. Mee, "The Non-Signers," in Am[illegible]an Heritage, Sept./Oct. 1987, pp. 78-79.)

To better understand Mason's concept of human liberties, and to understand why he refused to sign the new Constitution, read his final draft of the Virginia Declaration of Rights. Answer the items at the conclusion of the document to check your understanding.

GEORGE MASON--FINAL DRAFT OF THE VIRGINIA DECLARATION OF RIGHTS

12 June 1776

A Declaration of Rights made by the Representatives of the good people of Virginia, assembled in full and free Convention; which rights do pertain to {them and their} posterity, as the basis and foundation of Government.

1. That all men ar {by nature} equally free and independent, and have certain inherent rights, of which, {when they enter into a state of society,} they cannot, by any compact, deprive or divest their posterity; {namely,} the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. That all power is vest in, and consequently derived from, the People; that magistrates are their trusties and servants, and at all times amenable to them.

3. That Government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community;--of all the various modes and forms of Government that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration;--and that, whenever any Government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

4. That no man, or set of men, are entitled to exclusive or separate emoluments and privileges from the community, but in consideration of public services; which not being descendible {neither ought the offices} of Magistrate, Legislator, or Judge, {to be hereditary}.

5. That the Legislative and Executive powers of the State should be separate and distinct from the Judicative; and, that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections,{in which all, or any part of the former members, to be again eligible, or ineligible, as the law shall direct}.

6. That elections of members to serve as Representatives

of the people, in Assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, (and cannot be taxed or deprived of their property for) public uses without their own consent or that of their Representative (so elected,) nor bound by any law to which they have not, in like manner, assented, for the public good.

7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the Representatives of the people, is injurious to their rights, and ought not to be exercised.

8. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty, nor can he be compelled to give evidence against himself; that not man be deprived of his liberty except by the law of the land, or the judgement of his peers.

9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

10. That (general) warrants, whereby any officer or messenger may be commanded to search suspected places (without evidence of a fact committed,) or to seize any person or persons (not named, or whose offense is) not particularly described (and supported by evidence,) are grievous and oppressive, and ought not to be granted.

11. That in controversies respecting property, and in suits between man and man, the ancient trial by Jury is preferable to any other, and ought to be held sacred.

12. That the freedom of the Press is one of the greatest bulwarks of liberty, and can never be restrained but by despotic Governments.

13. That a well-regulated Militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free State; that Standing Armies, in time of peace, should be avoided as dangerous to liberty; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power.

14. That the people have a right to uniform Government; and, therefore, that no Government separate from, or independent of, the Government of Virginia, ought to be

erected or established within the limits thereof.

15. That no free Government, or the blessing of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

16. That Religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men (are equally entitled to the free) exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other.

Answer the questions below about Mason's Virginia Declaration of Rights.

1. Which of the following rights were protected in the Virginia Declaration of Rights? (If you check an item, include the number of the clause in which that right is protected.)

_____ a. A person's happiness and safety.

_____ b. The right to possess a firearm.

_____ c. The right to freely elected representatives.

_____ d. The right for an individual charged with a crime to confront his accuser.

_____ e. The right to privacy.

_____ f. To be protected against excessive bail.

_____ g. The right to a free press.

_____ h. The right to a guaranteed income.

_____ i. The right to shelter.

_____ j. The right to freely practice religion.

2. Imagine that you are the author of the Virginia

Declaration of Rights and you have just found out that the new Constitution will not contain a bill of rights. In less than 100 words, write a statement of your objections to the new Constitution formed by the Federal Convention.

Mason's Objections to the New Constitution

Several days before the Federal Convention concluded its work, Elbridge Gerry made a motion to preface the Constitution with a bill of rights, but it was unanimously rejected (by a vote of the state delegations). Mason, believing that the laws of the United States would be paramount to state bills of rights, seized the moment. His departure from Philadelphia was punctuated by his "Objections to the Constitution of Government Formed by the Federal Convention." Being a rather brief, but wide ranging document, "Objections" allowed Mason to make his point about the Constitution's major flaw, the fact that it lacked a bill of rights. Read the excerpts from Mason's "Objections" and complete the questions that follow to check your comprehension.

GEORGE MASON--OBJECTIONS TO THE CONSTITUTION OF GOVERNMENT FORMED BY THE FEDERAL CONVENTION

16 September 1787
by Col. Mason

There is no Declaration of Rights, and the laws of the general government being paramount to the laws and constitution of the several States, the Declaration of Rights in the separate States are no security. Nor are the people secured even in the enjoyment of the benefit of the common law...

The Judiciary of the United States is so constructed and extended, as to absorb and destroy the judiciaries of the several States; thereby rendering law as tedious, intricate and expensive, and justice as unattainable, by the great part of the community, as in England, and establishing the rich to oppress and ruin the poor...

The President of the United States has the unrestrained power of granting pardons for treason, which may be sometimes exercised to screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt...

Under their own construction of the general clause, at the end of the enumerated powers, the Congress may grant monopolies in trade and commerce, constituting new crimes, inflict unusual and severe punishments, and extend their powers as far as they shall think proper; so that the State legislatures have no security for the powers now presumed to remain to them, or the people for their rights...

There is no declaration of any kind, for preserving the liberty of the press, or the trial by jury in civil cases; nor against the danger of standing armies in time of peace...

Answer the following questions about Mason's "Objections".

1. What does Mason mean by the statement, "...the laws of the general government being paramount to the laws and constitutions of the several States, the Declaration of Rights in the separate States are no security"?

2. How did your "Objection" compare to the original document written by Mason? How would you rate Mason as an writer? As a civil libertarian?

Richard Henry Lee Writes to Virginia Governor Edmund Randolph About the New Constitution

Richard Henry Lee was one of the most gifted and respected men of colonial and post-Revolutionary America. He was a politician, a political philosopher and a very skilled writer and orator. He formerly proposed the Declaration of Independence in Congress on 7 June 1776, and was one of the signers of that document nearly a month later. At the time of the Constitutional Convention in Philadelphia in 1787, Richard Henry Lee was a member of the Confederation Congress in New York and although he had been appointed by Virginia as a delegate to the Constitutional Convention he declined because he felt it would be a conflict of interest for him to have a hand in writing the Constitution and then approve his own work as a member of Congress. (The original plan called for the completed Constitution to be debated and possibly changed by Congress before it was sent on to the states for ratification. (C. Vaughan Stanley, "The Lee Family and Ratification," published by the Virginia Independent, June 1988 and given as an extended lecture to the Directors of Stratford Hall, the Lee family home, on 11 October 1986.)

Opposed to the new Constitution because he feared that it would create an oligarchy, Lee became critical of a system of government that did not contain a bill of rights. He felt that civil liberties were at risk due to the concentration of power in the federal government And few were so blunt as Lee when he spoke of the campaign for ratification as another "conspiracy" against American liberty. While many of his letters were shared in private, Richard Henry's most significant epistle, sent to Virginia's governor Edmund Randolph, was intended as a public document and was printed by Mathew Carey in the American Museum. Here as elsewhere, Lee explained why the proposed Constitution menaced freedom.

Mainly, he called for adding to the document a guarantee of mankind's traditional rights. It can be argued that Richard Henry Lee did more for improving constitutional government in America than most men attending the Philadelphia Convention. His hue and cry about the proposed document's shortcomings slowed the haste for ratification. It was in significant measure due to Richard Henry Lee that supporters of the Constitution pledged a bill of rights would be the first order of business under the new government. In hesitant states, these assurances probably tipped the balance toward adoption and thus restored life to the infant union. (Paul Nagel, The Lees of Virginia, New York: Oxford University Press, 1990, p. 137.)

Read the following excerpt from Richard Henry Lee's letter to Governor Edmund Randolph and complete the questions that follow its conclusion.

RICHARD HENRY LEE: LETTER TO GOVERNOR EDMUND RANDOLPH

New York, Oct. 16th, 1787

Dear Sir,

I was duly honoured with your favour of September 17th, from Philadelphia, which should have been acknowledged long before now, if the nature of the business it related to had not required time. The establishment of the new plan of government, in its present form, is a question that involves such immense consequences, to the present times and to posterity that it calls for the deepest attention of the best and wisest friends of their country and mankind. If it be found right, after mature deliberation, adopt it; if wrong, amend it at all events: for to say that a bad government must be established for fear of anarchy, is really saying that we should kill ourselves for fear of dying! Experience, and the actual state of things, show that there is no difficulty in procuring a general convention, the late one having been collected without any obstruction; nor does external war, or internal discord prevent the most cool, collected, full, and fair discussion of this all-important subject. If, with infinite ease, a convention was obtained to prepare a system, why may not another convention, with equal ease, be obtained to make proper and necessary amendments? Good government is not the work of short time, or of sudden thought. From Moses to Montesquieu the greatest geniuses have been employed on this difficult subject, and yet experience has shown capital defects in the systems produced for the government of mankind. But since it is neither prudent nor easy to make frequent changes in government, and as bed governments have been generally found the most fixed, so it becomes of the last importance to frame the first establishment upon grounds the most unexceptionable, and such as the best theories with experience justify; not trusting as our new constitution does, and as many approve of doing, to time and future events to correct errors that both reason and experience, in similar cases, now prove to exist in the new system. It has hitherto been supposed a fundamental truth that, in governments rightly balanced, the different branches of legislature should be unconnected, and that the legislative and executive powers should be separate. In the new constitution, the president and senate have all the executive and two-thirds of the legislative; and in some weighty instances (as making all kinds of treaties which are to be the laws of the land) they have the whole legislative and executive powers... It cannot be denied, with truth, that this new constitution is, in its first principles, most highly and dangerously oligarchic; and it is a point agreed that a government of the few is, of all governments, the worst. The only check to be found in favour of the democratic principle, in this system, is the House of Representatives, which, I believe, may justly be called a mere shred or rag of representation, it being obvious, to the least examination, that smallness of number, and great comparative disparity of power, renders that house of little effect to promote good, or restrain bad government. But what is the power given to this ill constructed body? To judge of what may be for the general welfare, and such judgement, when made that of Congress, is to be the supreme law of the land. This seems to be a power co-extensive with every possible object of human legislation. Yet there is no restraint, in form of a bill of rights, to secure (what Dr. Blackstone calls) that residuum of human rights which is not meant to be given up to society, and which, indeed, is not necessary to be given for any good social purpose. The rights of conscience, the freedom of the press, and the trial by jury, are at mercy. It is, indeed, stated that, in criminal cases, the trial shall be by jury; but how? in the state? What then becomes of the jury of the vicinage, or, at least, from the county in the first instance; for the states being from fifty to seven hundred miles in extent, this mode of trial, even in criminal cases, may be greatly impaired; and in civil cases

the inference is strong, that it may be altogether omitted, as the constitution positively assumes it in criminal, and is silent about it in civil causes. Nay, it is more strongly discountenanced in civil cases, by giving the supreme court, in case of appeal, jurisdiction, both as to law and fact. Judge Blackstone, in his learned commentaries, (article Jury Trial) says, it is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals. A constitution, that I may venture to affirm, has, under providence, secured the just liberties of this nation for a long succession of ages; the impartial administration of justice, which secures both our persons and our properties, is the great end of civil society.....

From the Letters of Richard Henry Lee, 1779-1794, Vol. II, James Curtis Ballagh, ed., The MacMillan Company, 1914.

Answer the questions below about Richard Henry Lee's letter to Governor Edmund Randolph.

1. According to Richard Henry Lee, what fundamental truth exists about good government?

2. Why does Lee fear the creation of an oligarchy under the new Constitution?

3. In his letter to Randolph, Lee called for the Constitution to be amended with a guarantee of mankind's traditional rights. Which rights does he stress in this letter? Has he overlooked any rights that you feel should be protected?

4. What is "the great end of civil society" according to Lee? Do you agree or disagree with him? Why?

The Federal Farmer Writes to the Republican

As the ratification process began to heat up, so did the printing presses. Along with the speeches and personal letters, Federalists and Anti-Federalists alike began to publish essays in local newspapers. The Federalist, signed by Publius, was joined by Cato, Centinal, Brutus, and a host of other writers. Some people complained about the use of pseudonyms and called they were dishonest and deceitful. But a pseudonym was not merely or even mainly used to enable the author to conceal his opinion or to protect himself: it was a convention aimed at directing attention at the arguments rather than at personalities. A public figure might well declare his own position in a speech or letter and go on to publish a longer, more analytical piece over a pseudonym. Many of the prominent figures in the debate over the Constitution did precisely that. (Herbert J. Storing, The Complete Anti-Federalist, Vol. 2, p. 222.)

The observations of The Federal Farmer are generally, and correctly, considered to be one of the ablest Anti-Federalist pieces; they deserve to be read carefully by any serious student of Anti-Federalist thought. Originally there was some credit given to Richard Henry Lee for their authorship, but that claim has generally been refuted be recent scholarship. The writer who signed as "The Federal Farmer" may well have been Melancton Smith of New York. In any case, the merit and authorship of the essays was best summed up by Virginian Edward Carrington who sent The Federal Farmer's two volumes to Thomas Jefferson, describing them as reputedly "the best of anything that has been written in the opposition," but reported that "the author is not known." Eighteenth-century Americans, while sharing with the rest of humankind a curiosity and disposition to gossip about personalities, really did think what counts most (or at least what ought to count most) in political debate is what is said rather than who said it. What follows is an excerpt from the extended "Letters From the Federal Farmer to the Republican." Complete the questions that follow this essay to confirm your mastery of the Farmer's concern over the Constitution's lack of a bill of rights.

LETTERS FROM THE FEDERAL FARMER TO THE REPUBLICAN

Walter, Hartwell Bennett, ed., University of Alabama Press, 1978, pp. 105-112.

January 20, 1788

Dear Sir,

Having gone through with the organization of the government, I shall now proceed to examine more particularly those clauses which respect its powers. I shall begin with those articles and stipulations which are necessary for accurately ascertaining the extent of powers, and what is given, and for guarding, limiting, and restraining them in their exercise. We often find, these articles and stipulations placed in bills of rights; but they may as well be incorporated in the body of the constitution, as selected and placed by themselves. The constitution, or whole social compact, is but on instrument, no more or less, than a certain number of articles or stipulations agreed to by the people, whether it consists of articles, sections, chapters, bills of rights, or parts of any other denomination, cannot be material. Many needless observations, and idle distinctions, in my opinion, have been made respecting a bill of rights. On the one hand, it seems to be considered as a necessary distinct limb of the constitution, and as containing a certain number of very valuable articles, which are applicable to all societies: and on the other, as useless, especially in a federal government, possessing only enumerated power--nay, dangerous, as individual rights are numerous, and not easy to be enumerated in a bill of rights, and from articles, or stipulations securing some of them, it may be inferred, that others not mentioned are surrendered. There appears to me to be general indefinite propositions without much meaning--and the man who first advanced those of the latter description, in the present case, signed the federal constitution, which directly contradicts him. The supreme power is undoubtedly in the people, and it is a principle well established in my mind, that they reserve all powers not expressly delegated by them to those who govern; this is as true in forming a state as in forming a federal government. There is no possible distinction but this founded merely in the different modes of proceeding which take place in some cases. In forming a state constitution, under which to manage not only the great but the little concerns of a community; the powers to be possessed by the government are often too numerous to be enumerated; the people to adopt the shortest way often give general powers, indeed all powers, to the government, in some general words, and then, by a particular enumeration, take back, or rather say they however reserve certain rights as sacred, and which no laws shall be made to violate: hence the idea that all powers are given which are not reserved; but in forming a federal constitution, which ex vi termine, supposes state governments existing, and which is only to manage a few great national concerns, we often find it easier to enumerate particularly the powers to be delegated to the federal head, than to enumerate particularly the individual rights to be reserved; and the principle will operate in its full force, when we carefully adhere to it. When we particularly enumerate the powers given, we ought either carefully to enumerate the rights reserved, or be totally silent about them; we must either particularly enumerate both, or else suppose the particular enumeration of the powers given adequately draws the line between them and the rights reserved, particularly to enumerate the former and not the later, I think most advisable; however, as men appear generally to have their doubts about these silent reservations, we might advantageously enumerate the powers given, and then in general words, according to the mode adopted in the 2d art. of the confederation, declare all powers, rights and privileges, are reserved, which are not explicitly and expressly given up. People, and very wisely too, like to be express and explicit about their essential rights, and not to be forced to claim them on the precarious and unascertained tenure of inferences and general principles, knowing that in any controversy between them and their rulers, concerning those rights, disputes may be endless, and nothing certain:--But admitting, on the general principle, that all rights are reserved of course, which are not expressly surrendered, the people could with sufficient certainty assert their rights on all occasions, and establish them with ease, still there are infinite advantages in particularly enumerating many of the most essential rights reserved in all cases; and as to the less important ones, we may declare in general terms, that all not expressly surrendered are reserved. We do not by declarations change the nature of things, or create new truths, but we give existence, or at least establish in the minds of the people truths and principles which they might never otherwise have thought of, or soon forgot. If a nation means its systems, religious or political, shall have duration, it ought to recognize the leading principles of them in the front page of every family book. What is the usefulness of a truth in theory, unless it exists constantly in the minds of the people, and has their assent:--we discern certain rights, as the freedom of the press, and the trial by jury, &c. which the people of England and of America of course believe to be sacred, and essential to their political happiness, and this belief in them is the result of ideas at first suggested to them by a few able men, and of subsequent experience; while the people of some other countries hear these rights mentioned with the utmost indifference; they think the privilege of existing at the will of a despot much preferable to them. Why this difference amongst beings every way formed alike. The reason of the difference is obvious--it is the effect of education, a series of notions impressed upon the minds of the people by examples, percepts and declarations. When the people of England got together, at the time they formed Magna Charta, they did not consider it sufficient, that they were indisputably entitled to certain natural and unalienable rights, not depending on silent titles, they, by a declaratory act, expressly recognized them, and explicitly declared to all the world, that they were entitled to enjoy those rights; they made an instrument in writing, and enumerated those they then thought essential, or in danger, and this wise men saw not sufficient, and therefore, that the people might not forget these rights, and gradually become prepared for arbitrary government, their discerning and honest leaders caused this instrument to be confirmed near forty times, and to be read twice a year in public places, not that it would lose its validity without such confirmations, but to fix the contents of it in the minds of the people, as they successively come upon the stage.--Men, in some countries do not remain free, merely because they are entitled to them, not because their ancestors once got together and enumerated them on paper, but because, by repeated negotiations and declarations, all parties are brought to realize them and of course to believe them to be sacred. Were it necessary, I might shew the wisdom of our past conduct, as a people, in not merely comforting ourselves that we were entitled to freedom, but in constantly keeping in view, in addresses, bills of rights, in news-papers, &c. the particular principles on which our freedom must always depend.

It is not merely in this point of view, that I urge the engrafting in the constitution additional declaratory articles. The distinction, in itself just, that all powers not given are reserved, is in effect destroyed by this very constitution, as I shall particularly demonstrate--and even independent of this, the people, by adopting the constitution, give many general undefined powers to congress, in the constitutional exercise of which, the rights in question may be affected. Gentlemen who oppose a federal bill of rights, or further declaratory articles, seem to view the subject in a very narrow imperfect manner. These have for their objects, no only the enumeration of the rights reserved, but principally to explain the general powers delegated in certain material points, and to restrain those who exercise them by fixed known boundaries. Many explanations and restrictions necessary and useful, would be much less so, were the people at large all well and fully acquainted with the principles and affairs of government. There appears to be in the constitution, a studied brevity, and it may also be probable, that several explanatory articles were omitted from a circumstance very common. What we have long and early understood ourselves in the common concerns of the community, we are apt to suppose is understood by others, and need not be expressed; and it is not unnatural or uncommon for the ablest men most frequently to make this mistake. To make declaratory articles unnecessary in an instrument of government, two circumstances must exist; the rights reserved must be indisputably so, and in their nature defined; the powers delegated to the government, must be precisely defined by the words that convey them, and clearly be of such extent and nature as that, by no reasonable construction, they can be made to invade the rights and prerogatives intended to be left in the people.

The first point urged, is, that all power is reserved not expressly given, that particular enumerated powers only are given, that all others are not given, but reserved, and that it is needless to attempt to restrain congress in the exercise of powers they possess not. This reasoning is logical, but of very little importance in the common affairs of men; but the constitution does not appear to respect it even in any view. To prove this, I might cite several clauses in it. I shall only remark on two or three. By article 1, section 9, "No title of nobility shall be granted by congress." Was this clause omitted, what power could congress have to make titles of nobility? In what part of the constitution would they find it? The answer must be, that congress would have no such power--that the people, by adopting the constitution, will not part with it. Why then by a negative clause, restrain congress from doing what it would have not power to do? This clause, then, must have no meaning, or imply, that were it omitted, congress would have the power in question, either upon the principle that some general words in the constitution may be so construed as to give it, or on the principle that congress possess the powers not expressly reserved. But this clause was in the confederation, and is said to be introduced into the constitution from very great caution. Even a cautionary provision implies a doubt, at least, that it is necessary; and if so in this case, clearly it is also alike necessary in all similar ones. The fact appears to be, that the people in forming the confederation, and the convention, in this instance, acted, naturally, they did not leave the point to be settled by general principles and logical inferences; but they settle the point in a few words, and all who read them at once understand them.

The trial by jury in criminal as well as in civil causes, has long been considered as one of our fundamental rights, and has been repeatedly recognized and confirmed by most of the state conventions. But the constitution expressly establishes this trial in criminal, and wholly omits it in civil causes. The jury trial in criminal causes, and the benefit of the writ of habeas corpus, are already as effectually established as any of the fundamental or essential rights of the people in the United States. This being the case, why in adopting a federal constitution do we now establish these, and omit all others, or all others, at least with a few exceptions, such as again agreeing there shall be no ex post facto laws, no titles of nobility, &c. We must consider this constitution, when adopted, as the supreme act of the people, and in construing it hereafter, we and our posterity must strictly adhere to the letter and spirit of it, and in no instance depart from them: in construing the federal constitution, it will be not only impracticable, but improper to refer to the state constitutions. They are entirely distinct instruments and inferior acts: it is strongly implied, that they are of opinion, that they would not otherwise be secured as part of the federal system, or be regarded in the federal administration as fundamental. Further, these same rights, being established by the state constitutions, and secured to the people, our recognizing them now, implies, that the people thought them insecure by the state establishments, and extinguished or put afloat by the new arrangement of the social system, unless re-established.--Further, the people, thus establishing some few rights, and remaining totally silent about others similarly circumstanced, the implication indubitably is, that they mean to relinquish the latter, or at least feel indifferent about them. Rights, therefore, inferred from general principles of reason, being precarious and hardly ascertainable in the common affairs of society, and the people, in forming a federal constitution, explicitly showing they conceive these rights to be thus circumstanced, and accordingly proceed to enumerate and establish some of them, the conclusion will be, that they have established all which they esteem valuable and sacred. On every principle, then, the people especially having began, ought to go through enumerating, an establish particularly all the rights of individuals, which can be any possibility come in question in making and executing federal laws. I have already observed upon the excellency and importance of the jury trial in civil as well as in criminal causes, instead of establishing it in criminal causes only; we ought to establish it generally;--instead of the clause of forty or fifty words relative to this subject, why not use the language that has always been used in this country, and say, "the people of the United States shall always be entitled to the trial by jury." This would shew the people still hold the right sacred, and enjoin it upon congress substantially to preserve the jury trial in all cases, according to the usage and custom of the country. I have observed before, that it is the jury trial we want; the little different appendages and modifications tacked to it in the different states, are no more than a drop in the ocean: the jury trial is a solid uniform feature in a free government; it is the substance we would save, not the little articles of form.

Security against ex post facto laws, the trial by jury, and the benefits of the writ of habeas corpus, are but a part of those inestimable rights the people of the United States are entitled to, even in judicial proceedings, by the course of the common law. These may be secured in general words, as in New-York, the Western Territory, &c. by declaring the people of the United States shall always be entitled to judicial proceedings according to the course of the common law, as used and established in the said states. Perhaps it would be better to enumerate the particular essential rights the people are entitled to in these proceedings, as has been done in many of the states, and as has been done in England. In this case, the people may proceed to declare, that no man shall be held to answer to any offence, till the same be fully described to him; nor to furnish evidence against himself; that, except in the government of the army and navy, no person shall be tried for any offence, whereby he may incur loss of life, or an infamous punishment, until he be first indicted by a grand jury; that every person shall have a right to produce all proofs that may be favourable to him, and to meet the witnesses against him face to face; that every person shall be entitled to obtain right and justice freely and without delay: that all persons shall have a right to be secure from all unreasonable searches and seizures of their persons, houses, papers, or possessions; and that all warrants shall be deemed contrary to this right, if the foundation of them be not previously supported by oath, and there be not in them a special designation of persons or objects of search, arrest, or seizure: and that no person shall be exiled or molested in his person or effects, otherwise than by the judgement of his peers, or according to the law of the land. A celebrated writer observes upon this last article, that in itself it may be said to comprehend the whole end of political society. These rights are not necessarily reserved, they are established, or enjoyed but in few countries: they are stipulated rights, almost peculiar to British and American laws. In the execution of those laws, individuals, by long custom, by magna charta, bills of rights &c. have become entitled to them. A man, at first, by act of parliament, became entitled to the benefits of the writ of habeas corpus--men are entitled to these rights and benefits in the judicial proceedings of our state courts generally: but it will by no means follow, that they will be entitled to them in federal courts, and have a right to assert them, unless secured and established by the constitution or federal laws. We certainly, in federal processes, might as well claim the benefits of the writ of habeas corpus, as to claim trial by a jury--the right to have council--to have witnesses face to face--to be secure against unreasonable search warrants, &c. was the constitution silent as to the whole of them:--but the establishment of the former, will evince that we could not claim them without it; and the omission of the latter, implies they are relinquished, or deemed of no importance. These are rights and benefits individuals acquire by compact; they must claim them under compacts, or immemorial usage--it is doubtful, at least, whether they can be claimed under immemorial usage in this country; and it is, therefore, we generally claim them under compacts, as charters and constitutions.

The people by adopting the federal constitution, give congress general powers to institute a distinct and new judiciary, new courts, and to regulate all proceedings in them under the eight limitations mentioned in a former letter; and the further one, that the benefits of the habeas corpus act shall be enjoyed by individuals. Thus general powers being given to institute courts, and regulate their proceedings, with no provision for securing the rights principally in question, may not congress so exercise those powers, and constitutionally too, as to destroy those rights? clearly, in my opinion, they are not in any degree secured. But, admitting the case is only doubtful, would it not be prudent and wise to secure them and remove all doubts, since all agree the people ought to enjoy these valuable rights, a very few men excepted, who seem to be rather of opinion that there is little or nothing in them? Were it necessary I might add many observations to shew their value and political importance.

The constitution will give congress general powers to raise and support armies. General powers carry with them incidental ones, and the means necessary to the end. In the exercise of these powers, is there any provision in the constitution to prevent the quartering of soldiers on the inhabitants? you will answer, there is not. This may sometimes be deemed a necessary measure in the support of armies; on what principle can the people claim the right to be exempt from this burden? they will urge, perhaps, the practice of the country, and the provisions made in some of the state constitutions--they will be answered, that their claim thus to be exempt, is not founded in nature, but only in custom and opinion, or at best, in stipulation in some of the state constitutions, which are local, and inferior in their operation, and can have no control over the general government--that they had adopted a federal constitution--had noticed several rights, but had been totally silent about this exemption--that they had given general powers relative to the subject, which in their operation, regularly destroyed the claim. Though it is not to be presumed, that we are in any immediate danger from this quarter, yet it is fit and proper to establish, beyond dispute, those rights which are particularly valuable to individuals, and essential to the permanency and duration of free government. An excellent writer observes, that the English, always in possession of their freedom, are frequently unmindful of the value of it: we, at this period, do not seem to be so well off, having, in some instances abused ours; many of us are quite disposed to barter it away for what we call energy, coercion, and some other terms we use as vaguely as that of liberty--There is often as great a rage for change and novelty in politics, as in amusements and fashions.

All parties apparently agree, that the freedom of the press is a fundamental right, and ought not to be restrained by any taxes, duties, or in any manner whatever. Why should not the people, in adopting a federal constitution, declare this, even if there are only doubts about it. But, say the advocates, all powers not given are reserved:--true; but the great question is, are not powers given, in the exercise of which this right may be destroyed? The people's or the printers' claim to a free press, is founded on the fundamental laws, that is, compacts, and state constitutions, made by the people. The people, who can annihilate or alter those constitutions, can annihilate or limit this right.

This may be done by giving general powers, as well as by using particular words. No right claimed under a state constitution, will avail against a law of the union, made in pursuance of the federal constitution: therefore the question is, what laws will congress have a right to make by the constitution of the union, and particularly touching the press? By art. 1. sect. 8. congress will have power to lay and collect taxes, duties, imposts and excise. By this congress will clearly have power to lay and collect all kinds of taxes whatever--taxes on houses, lands, polls, industry, merchandize, &c.--taxes on deeds, bonds, and all written instruments--on writs, pleas, and all judicial proceedings, on licenses, naval officers' papers, &c. newspapers, advertisements, &c. and to require bonds of the naval officers, clerks, printers, &c. to account for the taxes that may become due on papers that go through their hands. Printing, like all other business, must cease when taxed beyond its profits; and it appears to me, that a power to tax the press at discretion, is a power to destroy or restrain the freedom of it. There may be other powers given, in the exercise of which this freedom may be effected; and certainly it is of too much importance to be left thus liable to be taxed, and constantly to constructions and inferences. A free press is the channel of communication as to mercantile and public affairs; by means of it the people in large countries ascertain each others sentiments; are enabled to unite, and become formidable to those rulers who adopt improper measures. Newspapers may sometimes be the vehicles of abuse, and of many things not true; but these are but small inconveniences, in my mind, among many advantages. A celebrated writer, I have several times quoted, speaking in high terms of the English liberties, says, "lastly the key stone was put to the arch, by the final establishment of the freedom of the press." I shall not dwell longer upon the fundamental rights, to some of which I have attended in this letter, for the same reasons that these I have mentioned, ought to be expressly secured, lest in the exercise of general powers given they may be invaded: it is pretty clear, that some other of less importance, or less in danger, might with propriety also be secured.

I shall now proceed to examine briefly the powers proposed to be vested in the several branches of the government, and especially the mode of laying and collecting internal taxes.

The FEDERAL FARMER

Answer the following questions about the Federal Farmer's letter of 20 January 1788.

1. Does The Federal Farmer think it wise to enumerate (or list) the powers given to the government?

2. Why does The Federal Farmer think it is important to enumerate the rights reserved to the people?

3. What does The Federal Farmer mean by the statement, "If a nation means its systems, religious or political, shall have duration, it ought to recognize the leading principles of them in the front page of every family book"?

4. How does the new Constitution destroy the notion that all powers not given are reserved?

5. Why is the Constitution of 1787 a better instrument to protect the right to a trial by jury in criminal and civil cases than are the various state constitutions?

6. What device has allowed individuals to acquire the vast array of rights that they have traditionally enjoyed in the United States and Great Britain?

7. How can freedom of the press be destroyed by a Constitution that identifies it as a power reserved to the people?

Patrick Henry Speaks Before the Virginia Ratifying Convention

In his biography of Patrick Henry, A Son of Thunder, Henry Mayer says the following about him:

> "We don't really know much about him. Patrick Henry's fame rests upon a single resounding sentence that rattles somewhat emptily in our heads, devoid of context and separated from the man. We know, vaguely, that his oratory helped propel the colonies toward independence, but we have forgotten that a dozen years later his dissenting voice, directed against the proposed Constitution of 1787, nearly defeated the measure and forced its proponents to adopt the conciliatory amendments known as the Bill of Rights.
>
> Patrick Henry survives in memory as an agitator, not as a statesman, even though he served three busy terms as Virginia's first governor and dominated the state assembly for a decade longer. In an age of reason he was emotional; in an era of aristocratic stewardship he voiced the demands of the inarticulate. In a time when men regarded statecraft as a science he remained indifferent to theory and impulsively reached for whatever argument best suited his immediate need.
>
> Henry combined an actor's flair with a preacher's fervor, and he evoked a rapport with ordinary folk that changed the face of Virginia's -- and later, America's -- politics." (Henry Mayer, A Son of Thunder, New York: Franklin Watts, 1986, intro.)

Imagine that you are in the audience as Patrick Henry delivers the following speech. Listen to his words as you read them and then respond to the questions that follow the text to make sure you understand them.

PATRICK HENRY--A SPEECH BEFORE THE VIRGINIA RATIFICATION CONVENTION

16 June 1788

Mr. Chairman,

The necessity of a Bill of Rights appear to me to be greater in this Government, than ever it was in any Government before.

There are certain maxims by which every wise and enlightened people will regulate their conduct. There are certain political maxims, which no free people ought ever to abandon. Maxims of which the observance is essential to the security of happiness. It is impiously irritating the avenging hand of Heaven, when a people who are in the full enjoyment of freedom, launch out into the wide ocean of human affairs, and desert those maxims which alone can preserve liberty. Such maxims, humble as they are, are those only which can render a nation safe or formidable. Poor little humble republican maxims have attracted the admiration and engaged the attention of the virtuous and wise in all nations, and have stood the shock of ages. We do not now admit the validity of maxims, which we once delighted in. We have since adopted maxims of a different but more refined nature: New maxims which tend to the prostration of republicanism.

We have one, Sir, That all men are by nature free and independent, and have certain inherent rights, of which, when they enter into society, they cannot by any compact deprive or divest their posterity. (From the Virginia Bill of Rights.) We have a set of maxims of the same spirit, which must be beloved by every friend to liberty, to virtue, to mankind. Our (Virginia) Bill of Rights contains those admirable maxims.

...I observed already, that the sense of the European nations, and particularly Great Britain, is against the construction of rights being retained, which are not expressly relinquished. I repeat, that all nations have adopted this construction--That all rights not expressly and unequivocally reserved to the people, are impliedly and incidentally relinquished to rulers; as necessarily inseparable from the delegated powers. It is so in Great Britain: For every possible right which is not reserved to the people by some express provision or compact, is within the King's prerogative. It is so in that country which is said to be in such full possession of freedom. It is so in Spain, Germany, and other parts of the world. Let us consider the sentiments which have been entertained by the people of America on this subject. At the revolution, it must be admitted, that it was their sense to put down those great rights which ought in all countries to he held inviolable and sacred. Virginia did so we all remember. She made a compact to reserve, expressly, certain rights. When fortified with full, adequate, and abundant representation, was she satisfied with that representation? No.--She most cautiously and guardedly reserved and secured those invaluable, inestimable rights and privileges, which no people, inspired with the least glow of the patriotic love of liberty, ever did, or ever can, abandon. She is called upon now to abandon them, and dissolve that compact which secured them to her. She is called upon to accede to another compact which most infallibly supersedes and annihilates her present one. Will she do it?--This is the question. If you intend to reserve your inalienable rights, you must have the most express stipulation. For if implication be allowed, you are ousted of those rights. If the people do not think it necessary to reserve them, they will be supposed to be given up. How were the Congressional rights defined when the people of America united by a confederacy to defend their liberties and rights against the tyrannical attempts of Great Britain? The states were not then contented with implied reservation. No, Mr. Chairman. It was expressly declared in our Confederation that every right was retained by the States respectively, which was not given up to the Government of the United States. But there is no such thing here. You therefore by a natural and unavoidable implication, give up your rights to the General Government. Your own example furnishes an argument against it. if you give up these powers, without a Bill of Rights, you will exhibit the most absurd thing to mankind that ever the world saw--A Government that has abandoned all its powers--The powers of direct taxation, the sword, and the purse. You have disposed of them to Congress, without a Bill of Rights--without a check, limitation, or control. And still you have checks and guards--still you keep barriers--pointed where? Pointed against your weakened, prostrated, enervated State Government! You have a Bill of Rights to defend you against the State Government, which is bereaved of all power; and yet you have none against Congress, though in full and exclusive possession of all power! You arm yourselves against the weak and defenseless, and expose yourselves naked to the armed and powerful. Is not this a conduct of unexampled absurdity? What barriers have you to oppose to this most strong energetic Government? To that Government you have nothing to oppose. All your defense is given up. this is a real actual defect.--It must strike the mind of every Gentleman. When our Government was first instituted in Virginia, we declared the common law of England to be in force.--That system of law which has been admired, and has protected us and our ancestors, is excluded by that system.--Added to this, we adopted a Bill of Rights. By this Constitution, some of the best barriers of human rights are thrown away. Is there not an additional reason to have a Bill of Rights? By the ancient common law, the trial of all facts is decided by a jury of impartial men from the immediate vicinage. This paper speaks of different juries from the common law, in criminal cases; and in civil controversies excludes trial by jury altogether. there is therefore more occasion for the supplementary check of a Bill of Rights now, than then. Congress from their general powers may fully go into the business of human legislation. They may legislate in criminal cases from treason to the lowest offence, petty

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larceny. They may define crimes and prescribe punishments. In the definition of crimes, I trust they will be directed by what wise Representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of Representatives. What says our Bill of Rights? "That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Are you not therefore now calling on those Gentlemen who are to compose Congress, to prescribe trials and define punishments without this control? Will they find sentiments there similar to this Bill of Rights? You let them loose--you do more--you depart from the genius of your country. That paper tells you that the trial of crimes shall be by jury, and held in the State where the crime shall have been committed.--Under this extensive provision, they may proceed in a manner extremely dangerous to liberty.--Persons accused may be carried from one extremity of the State to another, and be tried not by an impartial jury of the vicinage, acquainted with his character, and the circumstances of the fact; but a jury unacquainted with both, and who may be biassed against him.--Is not this sufficient to alarm men?--How different is this from the immemorial practice of your British ancestors, and your own? I need not tell you, that by the common law a number of hundredors were required to be on a jury, and that afterwards it was sufficient if the jurors came from the same county. With less than this the people of England have never been satisfied. That paper ought to have declared the common law in force.

In this business of legislation, your Members of Congress will lose the restriction of not imposing excessive fines, demanding excessive bail, and inflicting cruel and unusual punishments.--These are prohibited by your Declaration of Rights. What has distinguished our ancestors?--That they would not admit of tortures, or cruel and barbarous punishments. But Congress may introduce the practice of the civil law, in preference to that of the common law.--They may introduce the practice of France, Spain, and Germany--Of torturing to extort a confession of the crime. They will say that they might as well draw examples from those countries as from Great Britain; and they will tell you, that there is such a necessity of strengthening the arm of Government that they must have a criminal equity, and extort confession by torture, in order to punish with still more relentless severity. We are then lost and undone.--And can any man think it troublesome, when we can by a small interference prevent our rights from being lost?--If you will, like the Virginian Government, give them knowledge of the extent of the rights retained by the people, and the powers themselves, they will, if they be honest men, thank you for it. Will they not wish to go on sure grounds?

But if you leave them otherwise, they will not know how to proceed; and being in a state of uncertainty, they will assume rather than give up powers by implication. A Bill of Rights may be summed up in a few words. What do they tell us?--That our rights are reserved.--Why not say so? is it because it will consume to much paper? Gentlemen's reasoning against a Bill of Rights, do not satisfy me. Without saying which has the right side, it remains doubtful. A Bill of Rights is a favorite thing with the Virginians, and the people of the other States likewise. It may be their prejudice, but the Government ought to suit their geniuses, otherwise its operation will be unhappy. A Bill of Rights, even if its necessity be doubtful, will exclude the possibility of dispute, and with great submission, I think the best way is to have no dispute. In the present Constitution, they are restrained from issuing general warrants to search suspected places, or seize persons not named, without evidence of the commission of the fact, &c. There was certainly some celestial influence governing those who deliberated on that Constitution:--For they have with the most cautious and enlightened circumspection, guarded those indefeasible rights, which ought ever to be held sacred. The officers of Congress may come upon you, fortified with all the terrors of paramount federal authority.--Excisemen may come in multitudes:--For the limitation of their numbers no man knows.--They may, unless the General Government be restrained by a Bill of Rights, or some similar restriction, go into your cellars and rooms, and search, ransack and measure, every thing you eat, drink and wear. They ought to be restrained within proper bounds. With respect to the freedom of the press, I need to say nothing; for it is hoped that the Gentlemen who shall compose Congress, will take care as little as possible, to infringe the rights of human nature.--This will result from their integrity. They should from prudence, abstain from violating the rights of their constituents. They are not however expressly restrained.--But whether they will intermeddle with that palladium of our liberties or not, I leave to you to determine.

Answer the following questions to check your understanding of Henry's remarks.

1. Why does Henry believe that a bill of rights is more important under the new Constitution than any government before?

2. According to Patrick, what might happen if

inalienable rights are reserved rather than enumerated?

3. Will state governments be able to protect individual rights under the new Constitution? Explain your response.

4. Write three sentences that reflect Henry's attitude toward a bill of rights.

A Federalist/Anti-Federalist Forum on Free Government

The different positions of taken by the Federalists and Anti-Federalists about a bill of rights will be the focal points for a forum -- an open discussion about ideas and issues.

THE CORE QUESTION FOR THIS FORUM: Is a Bill of Rights essential in a free society?

1. **What position do the Federalists take on the core question?**
2. **What position do the Anti-Federalists take on the core question?**

In responding to these questions, identify the major strengths or weaknesses of each position and organize your answers around key ideas. The key ideas for each person or group are the ones you have judged to be the most important strengths or weaknesses in his/their position on a bill of rights.

Decide which group, the Federalists or Anti-Federalists, had the stronger position on a bill of rights. Select and defend the stronger position in a classroom forum on the concept of a bill of rights in the ratification debate of 1787-1788.

LESSON 4: TEACHING PLAN
A Second Federal Convention
A Mock Ratifying Convention: Is a Bill of Rights Necessary?

Objectives

Students are expected to

1) identify and comprehend Federalist and Anti-Federalist ideas on a bill of rights;

2) examine and explain the ideas of prominent Federalists and Anti-Federalists on the idea of a bill of rights;

3) compare and contrast Federalist and Anti-Federalist ideas on a bill of rights;

4) take and defend a position, pro or con, on a constitutional amendment proposed by Anti-Federalists at a mock Second Federal Ratifying Convention.

Estimation of Time Needed to Complete This Lesson: No More Than Four Class Periods

Opening the Lesson

Ask students to imagine what might have happened if the Anti-Federalists had been successful in their demands for a second Federal Convention. What might have taken place in Philadelphia during the summer of 1788 if the likes of James Wilson, Alexander Hamilton, Thomas Jefferson (back from Paris), James Madison, George Mason, Richard Henry Lee, The

Federal Farmer, and Patrick Henry had staged a debate over the need for a bill of rights in the new Constitution?

Encourage the students to discuss the question speculatively and briefly as a warm-up for this lesson. Then ask students to read the list of "Constitution Characters" in Lesson 4. These characters will be role played by the students in a mock Federal Convention.

Developing the Lesson

After they read the list of names, have students select a name from the "lottery box" that you circulate through the class. Each student will select one name. If a student selects the name of Fisher Ames, then that student will role play Ames during the mock ratifying convention. If student B selects the name of Agrippa, then that student will role play Agrippa during the mock ratifying convention. There are enough materials so that up to thirty-four students can role play different "Constitutional Characters." There are 16 "Characters" who could be classified as Federalists and another 18 who could be classified as Anti-Federalists. If there are more students than "Characters" assign the overload to teams of two individuals who can work together on this lesson.

Tell the students that they will be provided with special packets of material from the "Constitutional Archives" at the duPont Library at Stratford Hall. These packets contain documents that will supply personal information about each "Constitutional Character." In addition, each package will include information about the position that the "Character" took on the issue of a bill of rights.

Tell the students that these packets are filled with many "one of a kind" documents. Explain that many of the documents are very fragile and require special care. Tell the students that they are required to read the special list of rules on how to handle archival documents and rare books that accompanies each "Character" packet.

Here is a complete list of the "Constitutional Characters" that will be participating in your mock ratifying convention (also included is a notation indicating whether the person in question was a Federalist or Anti-Federalist):

Agrippa (Anti-Federalist)
Ames, Fisher (Federalist)
Brutus (Anti-Federalist)
Centinel (Anti-Federalist)
Cincinnatus (Anti-Federalist)
Clinton, George (Anti-Federalist)
DeWitt, John (Anti-Federalist)
Federal Farmer, The (Anti-Federalist)
Gerry, Elbridge (Anti-Federalist)
Hamilton, Alexander (Federalist)
Hancock, John (Federalist)

Constitutional Characters (continued)

Impartial Examiner, The (Anti-Federalist)
Jay, John (Federalist)
Jefferson, Thomas (Federalist)
Landowner (Federalist)
Lee, Arthur (Anti-Federalist)
Lee, Francis Lightfoot (Federalist)
Lee, Henry (Federalist)
Lee, Richard Henry (Anti-Federalist)
Livingston, Robert (Federalist)
Henry, Patrick (Anti-Federalist)
Madison, James (Federalist)
Marshall, John (Federalist)
Maryland Farmer, A (Anti-Federalist)
Mason, George (Anti-Federalist)
Monroe, James (Anti-Federalist)
One of the Common People (Anti-Federalist)
Randolph, Edmund (Federalist/Anti-Federalist)
Sherman, Roger (Federalist)
Smith, Melancton (Anti-Federalist)
Wythe, George (Federalist)
Wilson, James (Federalist)
Washington, George (Federalist)
Yates, Robert (Anti-Federalist)

Young women who are participating in the role play activity will assume the last name of their "Constitutional

Character." But the young women will be addresses as Miss Washington or Ms. Lee.

Ask students to develop a first person speech (maximum of three minutes) in which their characters defend or oppose the following proposed amendment:

RESOLVED: That the Constitution of 1787 be amended to include a full and comprehensive bill of rights.

Explain to the students that had such a mock ratifying convention been held the list of topics and the scope of the debate would have been much greater than in their mock convention. Their task, is to concern themselves with only one of the issues that would have confronted the delegates at such a convention: Did a bill of rights need to be added to the Constitution?

Concluding the Lesson

Ask the students to read the contents of their packets and prepare themselves for a classroom debate on the following resolution:

RESOLVED: That the Constitution of 1787 be amended to include a full and comprehensive bill of rights.

Tell the students that the proposal was advanced by the Anti-Federalists attending the Second Federal Convention. The classroom should be arranged with a podium in the front, Federalists sitting together on one side of the room, and the

Anti-Federalists sitting together on the other side of the room. The teacher or one of the students can act as the moderator or chairperson.

Have the Federalist side present its position first; the Anti-Federalist group follows; each group has a maximum of fifty minutes to present its position. The Federalist side may ask five questions of the Anti-Federalist side, then the Anti-Federalists may ask five questions of the Federalist side; two minutes will be allowed for the asking and answering of each question.

Open the discussion to the full class. Students may speak in favor of their own side in the debate or against the other side. Conclude the activity by asking students to step away from their role play characters and to vote, for or against, the resolution in the debate. Report the results to the class and ask the students what they have learned about the American political system, the Constitution, and the Bill of Rights from the Federalists and Anti-Federalists. How can these lessons be applied to contemporary issues?

LESSON 4
A Second Federal Convention
A Mock Ratifying Convention: Is a Bill of Rights Necessary?

Introduction to a Mock Ratifying Convention

The conflicting ideas of the Federalists and Anti-Federalists could have resulted in a second Federal Convention. This second Convention would have allowed its participants an opportunity to discuss a wide array of topics. Imagine a Second Federal Convention where the following "Constitutional Characters" would have gathered to debate the merits of a bill of rights:

Agrippa (Anti-Federalist)
Ames, Fisher (Federalist)
Brutus (Anti-Federalist)
Centinel (Anti-Federalist)
Cincinnatus (Anti-Federalist)
Clinton, George (Anti-Federalist)
DeWitt, John (Anti-Federalist)
Federal Farmer, The (Anti-Federalist)
Gerry, Elbridge (Anti-Federalist)
Hamilton, Alexander (Federalist)
Hancock, John (Federalist)
Impartial Examiner, The (Anti-Federalist)
Jay, John (Federalist)
Jefferson, Thomas (Federalist)
Landowner (Federalist)
Lee, Arthur (Anti-Federalist)

Constitutional Characters (continued)

Lee, Francis Lightfoot (Federalist)
Lee, Henry (Federalist)
Lee, Richard Henry (Anti-Federalist)
Livingston, Robert (Federalist)
Henry, Patrick (Anti-Federalist)
Madison, James (Federalist)
Marshall, John (Federalist)
Maryland Farmer, A (Anti-Federalist)
Mason, George (Anti-Federalist)
Monroe, James (Anti-Federalist)
One of the Common People (Anti-Federalist)
Randolph, Edmund (Federalist/Anti-Federalist)
Sherman, Roger (Federalist)
Smith, Melancton (Anti-Federalist)
Wythe, George (Federalist)
Wilson, James (Federalist)
Washington, George (Federalist)
Yates, Robert (Anti-Federalist)

Young women who are participating in the role play activity will assume the last name of their "Constitutional Character." But the young women will be addresses as Miss Washington or Ms. Lee.

The conflicting ideas of the Federalists and Anti-Federalists will be the object of a classroom debate. The debate will be organized around an amendment to the

Constitution of 1787 that might have been proposed by the Anti-Federalists attending a Second Federal Convention. The proposed amendment might have read as follows:

RESOLVED: That the Constitution of the 1787 be amended to include a full and comprehensive bill of rights.

Each student, by lottery, will be assigned a "Constitutional Character" to role play in the mock convention. Each student will be provided with an archival packet of materials that can be used to research the personality of the character and his position on the proposed amendment. Each student will develop a first person speech (maximum of three minutes) that will be delivered at the Second Federal Convention. Although such a convention would have dealt with a variety of topics, your "Constitutional Character" needs to concern himself with the single issue of the need for a bill of rights. You will have two class periods to do your research and two class periods to conduct the debate. Although you are encouraged to spend time outside of class to prepare your speech, the archival materials may not be check out. During your research you will become acquainted with the rules for using archival documents and rare books. Infractions of those rules will result in a loss of "Archival Privileges."

Your speech should accurately reflect the position and ideas of the person you are role playing. The use of direct quotes is encouraged, as is the development of props that would make your "Constitutional Character" more lifelike.

STUDENT HANDOUT

RULES FOR HANDLING ARCHIVAL DOCUMENTS AND RARE BOOKS

DOCUMENTS

Due to its acidic nature, old paper may become very brittle. Because of this, archival documents need to be handled in a delicate manner. These documents are **very** fragile. They should be thought of as historic gifts left by previous generations.

Archival documents need to be handled lightly. Slide your hand under the document in order to hold it. The document should be cradled, not crushed. Do not grasp the document between your fingers or between your thumb and finger. Do not bend or fold the pages. Take great care to protect the document from all foreign substances. Never eat or drink while in the presence of an archival document.

Take all notes in pencil. If you inadvertently mark the document, the mark can be removed by a professional archivist. **Do not try to remove the mark by yourself**. Remember: Do not mark or fold a historic document. Consider it as a national treasure that helps us better understand our nation's evolution.

RARE BOOKS

As a research scholar you may have the opportunity to examine rare books. If the opportunity presents itself, see a library staff member for assistance.

It should be remembered that a rare book, particularly if it is in its original binding, is one of the most fragile types of antiques. Only if rare books are treated with care will they survive to benefit future users.

1. Neither ink nor indelible pencils may be used near rare books or documents.
2. In order to remove a books from a shelf, push in the books on either side of the desired volume so that it may be easily grasped on the sides. Under **NO** circumstances should a book be pulled from the top of the spine.

(diagram)

3. In order to remove a large folio volume from the horizontal shelves, care should be taken to reach behind the volume and nudge it forward so that a firm grasp may be had on the sides of the book. Under no circumstances should a book be dragged from the shelves by the top and bottom of its spine.

4. When using a book at the table, avoid opening the covers all the way back by resting the open front cover on a low stack of books, notebooks, etc. Old bindings are very fragile, besides being very expensive to repair and replace.

5. Books should at all times be carried with both hands and should be held in the hands by the sides, not by the spine.

STUDENT HANDOUT

CHRONOLOGY OF EVENTS ASSOCIATED WITH THE FEDERALIST/ANTI-FEDERALIST DEBATE

Compiled by Dr. John J. Patrick
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September 17, 1787: Conclusion of the Federal Convention; each or the 12 state delegations voted to approve a final copy of a proposed Constitution of the United States.

September 20, 1787: The Congress of the United States received the proposed Constitution.

September 28, 1787: Congress voted to send the Constitution to the legislature of each state; Congress asked each state to either approve or reject the proposed Constitution.

October 18, 1787: The first in a series of 16 Anti-Federalist essays by Brutus (pseudonym) appeared in the New York Journal; these essays were representative of many Anti-Federalist writings published throughout the United States during the debates on the Constitution; although the identity of Brutus is unknown, most scholars today believe he was Robert Yates of New York.

October 27, 1787: The first Federalist paper, written by Alexander Hamilton, appeared in a New York City newspaper, The Independent Journal; this was the first in a series of 85 essays under the pseudonym Publius (51 by Hamilton) to explain the Constitution of 1787 and argue for ratification of it.

October 31, 1787: The second Federalist paper was published; it was the first of five essays written by John Jay under the pseudonym of Publius.

November 22, 1787: The tenth Federalist paper was published; this was the first of 29 essays written by James Madison under the pseudonym of Publius.

December 7, 1787: Delaware was the first state to ratify the Constitution; the vote was 30-0.

December 12, 1787: Pennsylvania ratified the Constitution by a 46 to 23 vote.

December 18, 1787: New Jersey ratified the Constitution by a 38-0 vote; twenty-one members of the Pennsylvania Ratification Convention issued an Anti-Federalist statement: The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to their Constituents.

January 2, 1788: Georgia was the fourth state to ratify the Constitution; the vote was 26-0.

January 9, 1788: Connecticut ratified the Constitution by a 128 to 40 vote.

February 6, 1788: Massachusetts was the sixth state to ratify the Constitution; the vote was 187-168; a Federalist victory was secured by promising to amend the Constitution to guarantee certain rights of the people and the states.

March 22, 1788: Volume I of The Federalist was published by McLean and Company of New York City. This volume included 36 essays, which had previously appeared in New York newspapers.

March 24, 1788: In a state-wide referendum, voters of Rhode Island rejected the Constitution; the vote was 2,711 to 239.

April 2, 1788: The Federalist No. 77 by Hamilton was published; this was the last essay in this series to appear initially in a newspaper (eight more essays would be written to complete the series).

April 28, 1788: Maryland was the seventh state to ratify the Constitution; the vote was 63-11.

May 23, 1788: South Carolina ratified the Constitution by a vote of 149-73; amendments were proposed.

May 28, 1788: Eight Federalist Papers (Numbers 78-85 by Hamilton) appeared in print for the first time in Volume II of The Federalist, which was published by McLean and Company (Volume II included Numbers 37-85); the complete collection of The Federalist Papers was included in two volumes.

June 21, 1788: New Hampshire was the ninth state to ratify the Constitution; the vote was 57-47; amendments were proposed.

June 25, 1788: Virginia ratified the Constitution by a 89-79 vote.

June 27, 1788: The Virginia Ratification Convention proposed amendments to the Constitution; these amendments, including a Bill of Rights, were advanced initially by Anti-Federalist leaders (for example, George Mason and Patrick Henry);

Federalist leaders (James Madison, for example) pledged to add a Bill of Rights to the Constitution.

July 2, 1788: Cyrus Griffin, the president of Congress, recognized that a minimum of nine states had ratified the Constitution, as required by Article VII of the document.

July 26, 1788: New York was the eleventh state to ratify the Constitution; the vote was 30-27; amendments were proposed.

August 2, 1788: The North Carolina Convention refused to ratify the new government under the Constitution.

October 10, 1788: Congress under the Articles of Confederation completed its last day of existence; it was disbanded to make way for a new government under the Constitution of 1787.

April 1, 1789: Members of the House of Representatives, elected under the Constitution, met and began to organize their branch of government.

April 6, 1789: Members of the Senate, elected under the Constitution, met and began to organize their branch of the new Congress.

April 30, 1789: George Washington, elected as the first President under the new Constitution, was inaugurated; he took the oath of office prescribed by the Constitution.

June 8, 1789: James Madison, Representative from Virginia, presented a Bill of Rights to the House of Representatives; he proposed this Bill of Rights as a set of amendments to the Constitution.

September 25, 1789: Congress approved amendments to the Constitution (a Bill of Rights) and sent them to the states for ratification.

November 21, 1789: North Carolina became the twelfth state to ratify the Constitution; the vote was 194-77.

May 29, 1790: Rhode Island ratified the Constitution, the last of the original thirteen states to do so; the vote was 34-32.

December 15, 1791: Virginia was the tenth state to ratify ten amendments to the Constitution; these amendments became part of the Constitution, the Bill of Rights.

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To be completed.

RULES FOR HANDLING ARCHIVAL DOCUMENTS AND RARE BOOKS

DOCUMENTS

Due to its acidic nature, old paper may become brittle. Because of this, archival documents need to be handled in a delicate manner. These documents are **very** fragile. They should be thought of as historic gifts left by previous generations.

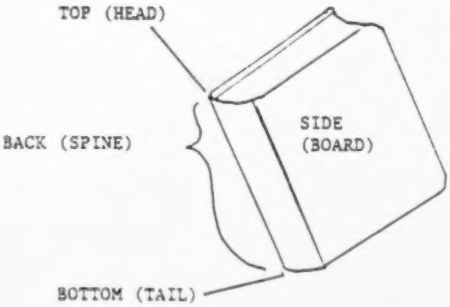
Archival documents need to be handled lightly. Slide your hand under the document in order to hold it. The document should be cradled, not crushed. Do not grasp the document between your fingers or between your thumb and finger. Do not bend or fold the pages. Take great care to protect the document from all foreign substances. Never eat or drink while in the presence of an archival document.

Take all notes in pencil. If you inadvertently mark the document, the mark can be removed by a professional archivist. **Do not try to remove the mark by yourself**. Remember: Do not mark or fold a historic document. Consider it as a national treasure that helps us better understand our nation's evolution.

RARE BOOKS

As a research scholar you may have the opportunity to examine rare books. If the opportunity presents itself, see a library staff member for assistance.

It should be remembered that a rare book, particularly if it is in its original binding, is one of the most fragile types of antiques. Only if rare books are treated with care will they survive to benefit future users.



1. Neither ink nor indelible pencils may be used near rare books or documents.
2. In order to remove a books from a shelf, push in the books on either side of the desired volume so that it may be easily grasped on the sides. Under **NO** circumstances should a book be pulled from the top of the spine.
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